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ABSTRACT

This report accompanies H.R. 897, the Copyright Reform Act of 1993. The bill, intended to amend title 17, United States Code, to modify certain recordation and registration requirements, to establish copyright arbitration royalty panels to replace the Copyright Royalty Tribunal, and for other purposes, is favorably reported by the Committee on the Judiciary with amendments. The text of the amendments is included. Other sections of the report include an explanation of the amendment; purpose of the legislation; a history of the committee action and vote of the legislation; the hearings on the bill; the legislative history of the bill; section-by-section analysis of the bill; committee oversight findings; Committee on Government Operations oversight findings; new budget authority and tax expenditures; inflationary impact statement; Congressional Budget Office cost estimate; and changes in the existing law made by the bill. The text of H.R. 897 is appended to the report. (JLB)

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103D CONGRESS
1st Session
HOUSE OF REPRESENTATIVES

ED 366 350

COPYRIGHT REFORM ACT OF 1993

NOVEMBER 20, 1993.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. BROOKS, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 897]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 897) to amend title 17, United States Code, to modify certain recordation and registration requirements, to establish copyright arbitration royalty panels to replace the Copyright Royalty Tribunal, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendment are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Copyright Reform Act of 1993".

SEC. 2. DEPOSIT OF COPIES OR PHONORECORDS FOR LIBRARY OF CONGRESS.

Section 407 of title 17, United States Code, is amended as follows:

(1) Subsection (a) is amended by striking "(a)" and all that follows through "publication—" and inserting the following:

"(a) REQUIRED DEPOSITS.—Except as provided in subsection (c), the owner of copyright in a work or of the exclusive right of publication of a work in the United States shall deposit, after the earliest date of such publication—".

(2) Subsection (b) is amended—

(A) by inserting "DEPOSIT IN COPYRIGHT OFFICE.—" after "(b)"; and

(B) by adding at the end the following: "A deposit made under this section may be used to satisfy the deposit requirements of section 408."

(3) Subsection (c) is amended—

(A) by inserting "REGULATIONS.—" after "(c)"; and

(B) by striking "Register of Copyrights" and inserting "Librarian of Congress".

(4) Subsection (d) is amended—

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(A) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(B) by striking "(d) At any time after publication of a work as provided by subsection (a)" and inserting the following:

"(d) PROCEDURES.—(1) During November of each year, the Librarian of Congress shall publish in the Federal Register a statement of the categories of works of which the Library of Congress wishes to acquire copies or phonorecords under this section during the next calendar year. The Librarian shall review such statement annually in light of the changes in the Library's policies and procedures, changes in technology, and changes in patterns of publication. The statement shall also describe—

"(A) the types of works of which only one copy or phonorecord need be deposited;

"(B) the types of works for which the deposit requirements may be fulfilled by placing the Library of Congress on a subscription list; and

"(C) the categories of works which are exempt under subsection (c) from the deposit requirements.

"(2) At any time after publication in the United States of a work or body of works";

(C) by striking "Register of Copyrights" and inserting "Librarian of Congress";

(D) by inserting after the first sentence the following: "Such demand shall specify a date for compliance with the demand.";

(E) by inserting "in a civil action" after "are liable";

(F) in subparagraph (B) (as redesignated by subparagraph (A) of this paragraph) by striking "cost of" and inserting "cost to";

(G) in subparagraph (C) (as redesignated by subparagraph (A) of this paragraph) by striking "clauses (1) and (2)" and inserting "subparagraphs (A) and (B)"; and

(H) by adding after subparagraph (C) (as so redesignated) the following: "In addition to the penalties set forth in subparagraphs (A), (B), and (C), the person against whom an action is brought under this paragraph shall be liable in such action for all costs of the United States in pursuing the demand, including an amount equivalent to a reasonable attorney's fee.".

(5) Subsection (e) is amended—

(A) by inserting "TRANSMISSION PROGRAMS.—" after "(e)";

(B) by striking "Register of Copyrights shall, after consulting with the Librarian of Congress and other interested organizations and officials," and inserting "Librarian of Congress shall, after consulting with interested organizations and officials,"; and

(C) in paragraph (2) by striking "Register of Copyrights" and inserting "Librarian of Congress".

(6) Section 407 of title 17, United States Code, is further amended by adding at the end the following:

"(f) OBLIGATION TO MAKE DEPOSITS.—Immediately upon the publication in the United States of any work in which copyright subsists under this title, it shall be the obligation of the persons identified in subsection (a) with respect to that work, subject to the requirements and exceptions specified in this section, to deposit, for the use or disposition of the Library of Congress, the copies or phonorecords specified in such subsection. The obligation to make such deposit arises without any prior notification or demand for compliance with subsection (a).

"(g) RECORDS OF DEPOSITS.—The Librarian of Congress shall establish and maintain public records of the receipt of copies and phonorecords deposited under this section.

"(h) DATABASE OF DEPOSIT RECORDS.—The Librarian of Congress shall establish and maintain an electronic database containing its records of all deposits made under this section on and after October 1, 1995, and shall make such database available to the public through one or more international information networks.

"(i) DELEGATION AUTHORITY.—The Librarian of Congress may delegate to the Register of Copyrights or other officer or employee of the Library of Congress any of the Librarian's responsibilities under this section.".

SEC. 3. COPYRIGHT REGISTRATION IN GENERAL.

Section 408 of title 17, United States Code, is amended—

(1) in subsection (c)—

(A) in paragraph (1) by adding at the end the following: "The Register is also authorized to specify by regulation classes of material in which registration may be made without deposit of any copy or phonorecord, in cases in which the Register determines that the purposes of examination, reg-

istration, and deposit can be adequately served by deposit of descriptive material only, or by a written obligation to deposit copies or phonorecords at a later date."; and

(B) in paragraph (2) by striking "periodicals, including newspapers" and all that follows through the end of subparagraph (B) and inserting "collective works, including periodicals, published within a 5-year period, on the basis of a single deposit and application and upon payment of any special registration fee imposed under section 708(a)(10), if the application identifies each work separately, including the collective work containing it and its date of first publication."; and

(2) by adding at the end the following:

"(f) COPYRIGHT OFFICE HEARINGS.—Not later than 1 year after the effective date of this subsection, and at 1-year intervals thereafter, the Register of Copyrights shall hold public hearings to consider proposals to amend the regulations and practices of the Copyright Office with respect to deposit of works in order to eliminate deposits that are unnecessary for copyright examination or the collections of the Library of Congress, and in order to simplify the registration procedures.".

SEC. 4. APPLICATION FOR COPYRIGHT REGISTRATION.

(a) APPLICATIONS.—Section 409 of title 17, United States Code, is amended—

(1) by striking "The application" and inserting "(a) CONTENTS OF APPLICATION.—The application";

(2) in paragraph (5) by inserting before the semicolon the following: ", and if the document by which ownership was obtained has been recorded in the Copyright Office, the volume and page number of such recordation";

(3) by striking paragraphs (9) and (10) and inserting the following:

"(9) in the case of a compilation or derivative work, an identification of any preexisting work or works that it is substantially based on or substantially incorporates, and a brief, general statement of the additional material covered by the copyright claim being registered;

"(10) at the option of the applicant, names, addresses, and telephone numbers of persons or organizations that potential users of the work should contact concerning permissions or licenses to use the work, and any information with respect to the terms of such permissions or licenses; and"; and

(4) by adding at the end the following:

"(b) SHORT-FORM APPLICATION.—

"(1) USE OF SHORT-FORM.—The Register of Copyrights shall prescribe a short-form application which may be used whenever—

"(A) the work is by a living author;

"(B) the claimant is the author;

"(C) the work is not anonymous, pseudonymous, or made for hire; and

"(D) the work as a whole, or substantial portions of it, have not been previously published or registered.

"(2) CONTENTS OF SHORT-FORM.—The short-form application shall include—

"(A) the name and address of the author;

"(B) the title of the work;

"(C) the nationality or domicile of the author;

"(D) the year in which creation of the work was completed;

"(E) if the work has been published, the date and nation of its first publication;

"(F) any other information regarded by the Register of Copyrights as bearing upon the preparation or identification of the work or the existence, ownership, or duration of the copyright; and

"(G) at the option of the applicant, names, addresses, and telephone numbers of persons or organizations that potential users of the work should contact concerning permissions or licenses to use the work, and any information with respect to the terms of such permissions or licenses.".

(b) EFFECTIVE DATE.—The amendments made by this section take effect 6 months after the date of the enactment of this Act.

SEC. 5. REGISTRATION OF CLAIM AND ISSUANCE OF CERTIFICATE.

(a) DETERMINATION OF REGISTRATION.—Section 410 of title 17, United States Code, is amended by striking subsections (a) and (b) and inserting the following:

"(a) DETERMINATION OF REGISTER.—If, after examination, the Register of Copyrights determines, in accordance with the provisions of this title, that there is no reasonable possibility that a court would hold the work for which a deposit is made pursuant to section 408(c) to be copyrightable subject matter, or the Register determines that the claim is invalid for any other reason, the Register shall refuse registration and notify the applicant in writing of the reasons for such refusal. In all

other cases, the Register shall register the claim and issue to the applicant a certificate of registration under the seal of the Copyright Office. A certificate of registration issued under this section extends only to those component parts of the work that both are the subject matter of copyright and the copyright owner has the right to claim. The certificate shall contain the information set forth in the application, together with the number and effective date of the registration.

"(b) APPEALS PROCEDURE.—The Register of Copyrights shall establish, and publish in the Federal Register, a formal procedure by which appeals may be taken from refusals under subsection (a) to register claims to copyright. Such procedure shall include a final appeal to the Register.".

(b) JUDICIAL PROCEEDINGS.—Subsection (c) of section 410 of title 17, United States Code, is amended—

(1) by inserting "EVIDENTIARY WEIGHT OF CERTIFICATE.—" after "(c)"; and

(2) by adding at the end the following: "Any error or omission made in good faith or upon reasonable reliance on counsel shall not affect the validity of the registration. In no case shall an incorrect statement made in an application for copyright registration invalidate the copyright.".

(c) TECHNICAL AMENDMENT.—Subsection (d) of section 410 of title 17, United States Code, is amended by inserting "EFFECTIVE DATE OF REGISTRATION.—" after "(d)".

SEC. 6. COPYRIGHT REGISTRATION PROVISIONS.

(a) REGISTRATION AND INFRINGEMENT ACTIONS.—(1) Section 411 of title 17, United States Code, is amended—

(A) by amending the section caption to read as follows:

"§ 411. Registration and infringement actions for certain works";

(B) by striking subsection (a); and

(C) in subsection (b)—

(i) by striking "(b)"; and

(ii) by striking paragraphs (1) and (2) and inserting the following:

"(1) serves notice upon the infringer, not less than 10 or more than 30 days before such fixation, identifying the work and the specific time and source of its first transmission; and

"(2) submits an application for registration of the copyright claim in the work, in accordance with this title, within 3 months after the first transmission of the work.".

(2) The item relating to section 411 in the table of sections at the beginning of chapter 4 of title 17, United States Code, is amended to read as follows:

"411. Registration and infringement actions for certain works".

(b) REGISTRATION AS PREREQUISITE TO CERTAIN REMEDIES FOR INFRINGEMENT.—Section 412 of title 17, United States Code, and the item relating to section 412 in the table of sections at the beginning of chapter 4 of title 17, United States Code, are repealed.

SEC. 7. REMEDIES FOR INFRINGEMENT.

Section 504(c)(2) of title 17, United States Code, is amended in the second sentence—

(1) by striking "court it" and inserting "court in";

(2) by inserting "or eliminate" after "reduce"; and

(3) by striking "to a sum of not less than $200".

SEC. 8. NOTIFICATION OF FILING AND DETERMINATION OF ACTIONS.

Section 508 of title 17, United States Code, is amended—

(1) in subsection (a)—

(A) in the first sentence by inserting "and the party filing the action" after "United States"; and

(B) in the second sentence by inserting "and the party filing the action" after "clerk"; and

(2) in subsection (b) by inserting "and the party filing the action" after "clerk of the court".

SEC. 9. STUDY ON MANDATORY DEPOSIT.

(a) SUBJECT MATTER OF STUDY.—Upon the enactment of this Act, the Librarian of Congress shall conduct a study of the mandatory deposit provisions of section 407 of title 17, United States Code. Such study shall place particular emphasis on the implementation of section 407(e) of such title with respect to the deposit of transmission programs, as well as possible alternative methods of obtaining deposits if the mandatory deposit requirements of such section 407 are expanded to authorize

the collection, archival preservation, and use by the Library of Congress of other publicly transmitted works, including unpublished works such as computer programs and online databases.

(b) CONDUCT OF STUDY.—The study under subsection (a) shall be conducted by the Register of Copyrights, in consultation with any affected interests, and may include the voluntary establishment, in collaboration with representatives of such interests, of practical tests and pilot projects.

(c) REPORT TO CONGRESS.—Not later than 18 months after the date of the enactment of this Act, the Librarian shall submit to the Congress a report on the results of the study conducted under this section, together with recommendations the Librarian has on—

(1) safeguarding the interests of copyright owners whose works are subject to the mandatory deposit provisions referred to in subsection (a);

(2) fulfilling the present and future needs of the Library of Congress with respect to archival and other collections development; and

(3) any legislation that may be necessary.

SEC. 10. STUDIES OF EFFECTS OF REGISTRATION AND DEPOSIT PROVISIONS.

Upon the enactment of this Act, the Librarian of Congress, after consultation with the Register of Copyrights and any affected interests, shall commence a study of the extent to which changes in the registration and deposit provisions of title 17, United States Code, that are made by this Act have affected the acquisitions of the Library of Congress and the operations of the copyright registration system, and any recommendations the Librarian may have with respect to such effects. Not later than 3 years after the date of the enactment of this Act, the Librarian shall submit to the Congress a report on such study. The Librarian may conduct further studies described in the first sentence, and report to the Congress on such studies.

SEC. 11. CONFORMING AMENDMENTS.

(a) DEFINITIONS.—Section 101 of title 17, United States Code, is amended by striking the definition of the "country of origin" of a Berne Convention work.

(b) INFRINGEMENT OF COPYRIGHT.—Section 501(b) of title 17, United States Code, is amended in the first sentence by striking ", subject to the requirements of section 411,".

(c) REMEDIES FOR INFRINGEMENT.—Section 504(a) of title 17, United States Code, is amended by striking "Except as otherwise provided by this title, an" and inserting "An".

SEC. 12. ADDITIONAL TECHNICAL AMENDMENTS.

(a) AMENDMENTS TO TITLE 17, UNITED STATES CODE.—Title 17, United States Code, is amended as follows:

(1) The definition of "publicly" contained in section 101 is amended—

(A) by striking "clause" and inserting "paragraph"; and

(B) by striking "processs" and inserting "process".

(2) The definition of "registration" contained in section 101 is amended by striking "412,".

(3) Section 108(e) is amended in the matter preceding paragraph (1) by striking "pair" and inserting "fair".

(4) Section 109(b)(2)(B) is amended by striking "Copyright" and inserting "Copyrights".

(5) Section 304(c) is amended in the matter preceding paragraph (1) by striking "the subsection (a)(1)(C) and inserting "subsection (a)(1)(C)".

(6) Section 405(b) is amended by striking "condition or" and inserting "condition for".

(7) The item relating to section 504 in the table of sections at the beginning of chapter 5 is amended by striking "Damage" and inserting "Damages".

(8) Section 501(a) is amended by striking "sections 106 through 118" and inserting "section 106".

(9) Section 509(b) is amended by striking "merchandise; and baggage" and inserting "merchandise, and baggage".

(10) Section 601 of title 17, United States Code, is amended—

(A) in subsection (a) by striking "nondramtic" and inserting "nondramatic"; and

(B) in subsection (b)(1) by striking "subsustantial" and inserting "substantial".

(11) Section 801(b)(4) of title 17, United States Code, is amended by adding a period after "chapter 10".

(12) The item relating to section 903 in the table of sections at the beginning of chapter 9 is amended to read as follows:

"903. Ownership, transfer, licensing, and recordation.".

(13) Section 909(b)(1) is amended—

(A) by striking "force" and inserting "work"; and

(B) by striking "sumbol" and inserting "symbol".

(14) Section 910(a) is amended in the second sentence by striking "as used" and inserting "As used".

(15) Section 1006(b)(1) is amended by striking "Federation Television" and inserting "Federation of Television".

(16) Section 1007 is amended—

(A) in subsection (a)(1) by striking "the calendar year in which this chapter takes effect" and inserting "calendar year 1992"; and

(B) in subsection (b) by striking "the year in which this section takes effect" and inserting "1992".

(17) The table of chapters at the beginning of title 17, United States Code, is amended—

(A) by amending the item relating to chapter 6 to read as follows:

"6. Manufacturing Requirements and Importation ..... 601".

(B) by amending the item relating to chapter 9 to read as follows:

"9. Protection of Semiconductor Chip Products ..... 901".

and

(C) by adding at the end the following:

"10. Digital Audio Recording Devices and Media ..... 1001".

(b) OTHER PROVISIONS OF LAW.—(1) Section 2319(b)(1) of title 18, United States Code, is amended by striking "at last" and inserting "at least".

(2) Section 1(a)(1) of the Act entitled "An Act to amend chapter 9 of title 17, United States Code, regarding protection extended to semiconductor chip products of foreign entities", approved November 9, 1987 (17 U.S.C. 914 note), is amended by striking "orginating" and inserting "originating".

(3) Section 3(a)(1)(C) of the Audio Home Recording Act of 1992 is amended by striking "adding the following new paragraph at the end" and inserting "inserting after paragraph (3) the following new paragraph".

SEC. 13. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in section 4(b), and subject to subsection (b) of this section, this Act and the amendments made by this Act take effect on the date of the enactment of this Act.

(b) PENDING ACTIONS.—The amendments and repeals made by section 6 shall not affect any action brought under title 17, United States Code, before the date of the enactment of this Act.

Amend the title so as to read:

A bill to amend title 17, United States Code, to modify certain registration requirements, and for other purposes.

EXPLANATION OF AMENDMENT

Inasmuch as H.R. 897 was reported with an amendment in the nature of a substitute, the contents of this report constitute an explanation of the amendment in the nature of a substitute.

PURPOSE OF THE LEGISLATION

The purpose of H.R. 897 is to provide needed reforms in the Copyright Office registration process and in the deposit of copyrighted materials with the Library of Congress.

COMMITTEE ACTION AND VOTE

On November, 17, 1993, a reporting quorum being present, the Committee ordered H.R. 897 reported to the full House by voice vote, as amended.

HEARINGS

On March 3 and 4, 1993, the Subcommittee on Intellectual Property and Judicial Administration held hearings on H.R. 897. Testimony was received from Cindy S. Daub, Commissioner, Copyright Royalty Tribunal; Edward J. Damich, Commissioner, Copyright Royalty Tribunal; Bruce D. Goodman, Commissioner, Copyright Royalty Tribunal; Steve Peters, Senior Corporate Counsel, Adobe Systems, Inc.; Steven J. Metalitz, Vice President and General Counsel, Information Industry Association; Robert Holleyman, Business Software Alliance; James S. Burger, Director, Government Law, Apple Computer, Inc., on behalf of the Computer Business & Equipment Manufacturers Association; Michael Cleary, American Bar Association; James H. Billington, Librarian of Congress; Ralph Oman, Register of Copyrights; Art Rogers, an artist; Richard Weisgrau Executive Director, American Society of Media Photographers; Andy Foster, Executive Director, Professional Photographers of America; Olan Mills II, Olan Mills Corporation; Paul Basista, Executive Director, Graphic Artists Guild; and Paul Warren, Chairman, Intellectual Property Committee, Newsletter Publishers Association.

LEGISLATIVE HISTORY

H.R. 897 was introduced on February 16, 1993 by Mr. Hughes and Mr. Frank, and was referred to the Committee on the Judiciary.[1] Title I proposed reforms in the Copyright Office registration and recordation requirements, and in the copyright deposit provisions for the benefit of the Library of Congress. Title II proposed to establish copyright arbitration royalty panels to replace the Copyright Royalty Tribunal.

Hearings on H.R. 897 were held by the Subcommittee on Intellectual Property and Judicial Administration on March 3 and 4, 1993. On August 3, 1993, Title II of H.R. 897 was reintroduced, in substantially similar form, by Mr. Hughes and Mr. Frank as H.R. 2840.[2] On August 5, 1993, the Subcommittee on Intellectual Property and Judicial Administration marked up H.R. 2840 with a single amendment in the nature of a substitute. On October 6, 1993, the full Committee marked up H.R. 2840, and a quorum of Members being present, approved the amendment in the nature of a substitute with two amendments offered en bloc by Mr. Hughes, and favorably reported the bill as amended by voice vote.[3] On October 12, H.R. 2840 passed the House.

On November 4, 1993, the Subcommittee on Intellectual Property and Judicial Administration marked up H.R. 897 with a single amendment in the nature of a substitute. The amendment concerned reforms in the Copyright Office registration procedures and in the mandatory deposit requirement provisions for the benefit of the Library of Congress. It did not contain Title II of H.R. 897 as introduced. That Title was incorporated, as amended, in a separate bill, H.R. 2840, which passed the House on October 12, 1993.

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[1] An identical bill, S. 373, was introduced the same day by Senators DeConcini and Hatch.
[2] An identical bill, S. 1346, was introduced the same day by Senators DeConcini and Hatch.
[3] H.R. Rept. No. 103–286, 103d Cong., 1st Sess. (1993).

On November 17, 1993, the full Committee marked up H.R. 897 and, a quorum of members being present, approved the amendment in the nature of a substitute and favorably reported the bill by voice vote.

DISCUSSION

BACKGROUND

Article I, section 8, clause 8 of the Constitution gives the Congress the power to grant authors exclusive rights to their writings in order to "Promote the Progress of Science."

Beginning in 1790, the Congress has continually exercised its constitutional authority by enacting copyright legislation. Throughout much of this 203-year period, American copyright law has been characterized by a rigorous system of formalities. Failure strictly to comply with these formalities usually resulted in complete, irretrievable loss of copyright. Such formalities have included mandatory registration of a claim to copyright, mandatory deposit of copies of the work, mandatory affixation of a copyright notice, mandatory filing of a timely renewal application, and a domestic manufacturing requirement.

In addition to causing many copyrighted works inadvertently to fall into the public domain to the economic detriment of authors and their heirs, these requirements also had the effect of placing the United States outside the mainstream of international copyright law as exemplified in the Berne Convention for the Protection of Literary and Artistic Works. Article 5(2) of the current (1971 Paris) text of the Convention states: "The enjoyment and exercise of * * * rights shall not be subject to any formality."

The 1976 Copyright Act went some way toward ameliorating the harshness of formalities. Nevertheless, the notice requirement, although liberalized, was still mandatory, with failure to affix the proper notice and take prescribed curative steps still resulting in loss of copyright;[4] failure to comply with a liberalized manufacturing clause requirement also resulted in loss of protection.[5] Mandatory deposit with the Library of Congress was repealed as a condition of copyright, but was replaced with Section 412, which, for the first time, prohibited an award of the important remedies of statutory damages and attorney's fees in the copyrighted work was infringed before registration took place.[6] Recordation of transfers of copyright with the Copyright Office was required, for the first time, as a condition of a transferee bringing an infringement action.[7] Section 411(a) continued the prior law by prohibiting the bringing of an infringement action unless a registration had been obtained from (or refused by) the Copyright Office.[8]

In 1986, the manufacturing clause expired by its own terms, thereby removing one major obstacle to U.S. adherence to the Berne Convention. In 1988, with the passage of the Berne Imple-

[4] 17 U.S.C. §§ 401–406 (1978).
[5] 17 U.S.C. § 601 (1978).
[6] A three-month grace period was provided for published works.
[7] 17 U.S.C. § 205(d) (1978).
[8] The provision that an infringement action could be brought after a refusal was an innovation. Prior law required that a mandamus action be brought against the Register of Copyrights in such an event.

mentation Act,[9] both the mandatory use of a copyright notice and recordation of a transfer of copyright ownership with the Copyright Office as prerequisite to the bringing of an infringement action were abolished. At the same time, the Section 411(a) requirement that registration or a refusal to register be obtained before the bringing of an infringement action was "two-tiered": the requirement was repealed for works whose country of origin is a Berne Convention country other than the United States,[10] but was retained for all other works, including works by U.S. authors. The Section 412 requirement that registration precede infringement in order to obtain statutory damages and attorney's fees was retained for all works, including those whose country of origin is a Berne Convention country other than the United States.

In 1992, the Automatic Renewal Act of 1992 amended Section 304 of title 17, United States Code, to provide for automatic grant of the renewal term for applicable works,[11] reversing a 202-year practice of throwing works into the public domain for failure to file a timely renewal application.

The reforms proposed in H.R. 897 are intended to eliminate the last significant vestiges of the formality-based approach to United States copyright law, thereby placing the United States comfortably within international norms, and eliminating provisions that other countries, reluctant to protect U.S. works, can point to as justification for discrimination against U.S. works. The Committee believes these reforms will thus assist our trade negotiators in their efforts to secure adequate and effective protection for U.S. copyrighted works overseas. The Committee intends these reforms also to ensure that, domestically, copyright owners will be able to enjoy the remedies that Congress has granted them.

These goals will be achieved principally through repeal of Sections 411(a) and 412 of title 17, United States Code. The Committee is convinced, after fifteen years experience with these sections, that they no longer represent good copyright policy.

Experience with section 411(a) of the 1976 act and as amended by the Berne Implementation Act of 1988

Under the 1909 Copyright Act, registration was a prerequisite to the maintenance of an infringement action, and was tied to deposit for the benefit of the Library of Congress.[12] Deposit was not merely a jurisdictional requirement: failure to comply with a demand for deposit resulted in loss of copyright.[13]

The 1976 Act separated Library of Congress deposit from copyright registration by placing the Library deposit requirement in its own section (§ 407), by not making Library deposit a prerequisite to the institution of an infringement suit, and, by providing that

[9] Act of October 31, 1988, Pub. L. 100–568, 102 Stat. 2853, effective March 1, 1989.

[10] A definition of the "country of origin" of a Berne Convention work was provided in Section 101 of title 17, United States Code.

[11] Act of June 26, 1992, P.L. 102–307, 102d Cong., 2d Sess., 106 Stat. 264. This act affects only works first published between 1964 and 1977. Works published before 1964 had already either been duly renewed or had fallen into the public domain. Works published on or after January 1, 1978 enjoy a single term of protection with no need for renewal 17 U.S.C. § 302 (1978).

[12] Section 13 of the 1909 Act stated that "[n]o action or proceeding shall be maintained for infringement of copyright in any work until the provisions of this title with respect to the deposit of copies and registration of such work shall have been complied with."

[13] 17 U.S.C. § 14 (1909).

failure to comply with a demand by the Librarian of Congress for deposit results only in administrative fines, and not, as under prior law, forfeiture of copyright.[14] The requirement that registration with the Copyright Office be obtained (or refused) before the institution of an infringement action was placed in Section 411(a).

As noted above, the Section 411(a) requirement was repealed in 1988 (effective March 1, 1989) for works whose country of origin is a Berne Convention country other than the United States. The Requirement was retained for works whose country of origin is the United States or a non-Berne member country. The discriminatory nature of this two-tier arrangement against United States authors is difficult to defend. At the March 1993 hearings on H.R. 897 before the Subcommittee on Intellectual Property and Judicial Administration, one U.S. software company testified that it had spent approximately $400,000 over a period of three years preparing the deposit copies and application forms necessary to obtain a copyright registration.[15] As foreign software companies from other Berne countries are not required to make these expenditures, the Committee believes Section 411(a) places United States companies at a competitive disadvantage.

The Committee does not view Section 411(a) as an effective indirect conduit for Library of Congress deposits. While Section 408 of the Copyright Act, which provides for voluntary copyright registration, states in subsection (b), that copies deposited in order to fulfill the copyright registration deposit requirement can do double duty by also fulfilling the separate Library of Congress deposit requirement of Section 407, the Librarian of Congress has testified that Section 411(a) "serves little or no purpose in inducing deposit for the collections of the Library."[16] The Committee agrees. One reason for this conclusion is that the nature of the deposit for copyright registration may not be the finished work, or in a form that is valuable to the Library. The purposes underlying copyright registration and Library of Congress deposit are quite different. The purpose of the copyright registration deposit is to enable the Copyright Office to examine a claim for registrability. The Library of Congress, on the other hand, is concerned with having the best quality, archival version of the work. This version may well be different from that deposited for copyright examination purposes.

Computer programs provide an excellent illustration of the difference between deposits for copyright registration and deposits for Library acquisition. The copyright registration deposit of a computer program that will be published in a machine-readable copy typically consists of the first and last 25 pages of source code, with trade secrets and other confidential material blacked out. This form is of no use to the Library of Congress, which needs (and requires deposit of) the machine-readable version.[17]

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[14] 17 U.S.C. § 407(d) (1978).

[15] See testimony of Steve Peters, Adobe Systems, Inc., Copyright Reform Act of 1993: Hearing on H.R. 897 Before the Subcomm. on Intellectual Property & Judicial Administration of the House Judiciary Comm., 103 Cong., 1st Sess. 131 (1993).

[16] Written testimony of Librarian of Congress James H. Billington, before the Senate Subcommittee on Patents, Copyrights, and Trademarks of the Senate Committee on the Judiciary on S. 373, p. 24 (October 19, 1993).

[17] 37 CFR § 202.19(d)(vii).

Certainly some works that the Library wishes to acquire, other than computer programs, may come in because of Section 411(a). But many of the works that are the frequent subject of copyright litigation, such as the designs of useful articles, are ones that the Library of Congress has exempted, by regulation, from the Section 407 deposit requirement based on a judgment that they are not of value to the Library's collections.[18] Finally, since registration may be made at any time before an infringement action is brought, even for those Section 408 works which the Library may wish to acquire, one of the most important of the Library's acquisition goals—timeless—cannot be met by this section.

A final reason for repeal of Section 411(a) is the assumption by the Copyright Office, in the past decade, of the role of gatekeeper to the courts. As used here, the term "gatekeeper" refers not to the Section 411(a) requirement that a registration or refusal to register be obtained from the Copyright Office before an action for infringement be obtained.[19] Rather, the Committee refers to attempts by the Copyright Office to shape the scope of copyright through its power to refuse to issue a certificate of registration unless the applicant either disclaims certain material,[20] or, conversely, identifies specific material for which registration is sought.[21] This role has, understandably, been controversial.[22]

The Committee considers this gatekeeper role to exceed the Office's limited examination function. The function of the examination process is not to influence directly or indirectly the scope of copyright that a court might accord, nor to weed out works, which though copyrightable in their entirety, may, in the Office's opinion may be the subject of frivolous or overreaching infringement claims. The Office's function is to examine the material deposited for registration and to evaluate, using the standards for copyrightability developed by the courts, whether the material meets those standards. If the material meets those standards, registration is required.

While the Copyright Office may require a claimant to delete a reference to material that is, in its opinion, not registrable, e.g., a claim for an "idea," where no such claim is made, the Office does not have the authority to require applicants to disclaim material for which no such claim has been made. Similarly, the Office should not require applicants to identify specific material within the deposit for which registration is sought.

In summary, the Committee is of the view that the discriminatory impact of Section 411(a) on U.S. authors, the Librarian of Congress opinion that the section serves little or no purpose for inducing deposits that the Library desires, and the recent use of Section 411(a) by the Copyright Office to assume the role of gatekeeper to the courts, argue decisively for repeal of the provision.

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[18] See 37 CFR § 202.19(c).

[19] Except, of course, after March 1, 1989, for works whose country of origin is a Berne Convention country other than the United States.

[20] See Notice of Inquiry: Copyrightability of Digitized Typefaces, 53 Fed. Reg. 20241 (May 2, 1991); Final Regulation: Registrability of Computer Programs that Generate Typefaces, 57 Fed. Reg. 6201 (February 21, 1992).

[21] See 37 CFR § 202.20(c)(vii)(B) (automated databases).

[22] See Metalitz, "Copyright Registration After Feist: New Rules and New Roles?," 17 Dayton L. Rev. 763 (1992).

Experience with section 412 of the 1976 act

Section 411(a) operates in tandem with Section 412: in order to obtain the important remedies of statutory damages and attorney's fees, registration (and therefore deposit) with the Copyright Office has to be made before an infringement occurs.[23]

Section 412 of the 1976 Act was enacted to function as an alternative incentive to the mandatory deposit requirement provision of the 1909 Act. Section 412 was not inserted out of a belief that copyright owners should receive the remedies of statutory damages and attorney's fees only if their works were registered before they were infringed, nor was it inserted for any purposes related to litigation, such as weeding out frivolous lawsuits.[24]

In line with the law of unintended consequences, Section 412 has turned out to be a powerful weapon against copyright owners. In the words of the Association of American Publishers in a 1986 letter to the Register of Copyrights, Section 412 has

> become more of a shield for infringers than a benefit to anyone. Registration as a condition to statutory damages and attorney's fees in some cases, as one example, has become particularly problematic. Eligibility for such remedies has been an important ingredient in our copyright laws out of recognition that they may provide the only real hope of meaningful economic relief in infringement actions. A possible lack of eligibility for this relief has been the cornerstone of the tactics of even the most blatant infringers under the 1976 Copyright Act. Yet, the Copyright Office's proposed fee increase will undoubtedly force many authors and other copyright owners to forego regular registration, rendering their copyrights of little practical value against infringers who will be emboldened by the possibility that the infringed author or copyright owner will be unable to secure any real financial relief after engaging in expensive complaint, settlement, and litigation procedures. Particularly with the proposed fee increases, the "inducements" will become obstacles to the protection of copyright.

The Committee agrees with this assessment. H.R. 897 is designed to remedy the very real problems for copyright owners pointed out by the Association of American Publishers. Of course, the remedies at issue remain discretionary. A review made by the Committee's Subcommittee on Intellectual Property and Judicial Administration of decisions under the 1976 Act awarding statutory damages and attorney's fees shows that the courts have intelligently tailored the awards to fit the potential harm suffered by the copyright owner and the defendant's culpability.

H.R. 897 is intended to provide equal access to justice, and is designed to give individuals and small businesses an opportunity—currently denied in many cases—to present meritorious claims. However, in order to reassure those who fear that the availability of statutory damages and attorney's fees might lead to increased

[23] A three-month grace period is provided for published works.

[24] See testimony of former Register of Copyrights Barbara Ringer, Hearing on S.373, The Copyright Reform Act of 1993 Before the Senate Subcomm. on Patents, Copyrights, and Trademarks of the Senate Judiciary Comm., October 19, 1993.

suits against individuals who are unaware of the copyright law, the innocent infringer provision of Section 504(c)(2) of title 17, United States Code, which permits courts, in their discretion, to reduce the award of statutory damages to not less than $200, has been amended to permit the courts to further reduce the award to as little as one dollar, or zero. Section 505 of title 17, United States Code, which currently gives the courts discretion to award costs and attorney's fees to the prevailing party, has not been amended. Under this section, the courts already have the discretion to award an amount they believe appropriate, or no fees at all. Concern was expressed that with the repeal of Sections 411(a) and 412 of title 17, United States Code, litigation involving professional photographers may increase because of a failure to affix a copyright notice on the photograph, thus causing difficulties on the part of individuals and photofinishers in determining copyright ownership. In cases where a court finds the defendant to be an innocent infringer, the Committee expects that the courts will not, in the usual case, award costs or attorney's fees.

Alternative incentives to registration as a result of repeal of sections 411(a) and 412

The Committee has no evidence that repeal of Sections 411(a) and 412 will adversely affect the Library of Congress acquisition of copyrighted works. The Librarian of Congress, while acknowledging the lack of such evidence, previously expressed concern that repeal of these sections might result in loss of such deposits.

The Committee views the collections of the Library of Congress as a valuable resource that must be nurtured so that present and future generations of Americans will be able to depend on the unique record of creativity the Library documents. At the same time, Library acquisition policy must not determine copyright policy. In an era when overseas markets for U.S. intellectual property are of critical economic importance, and the digital revolution threatens a number of the traditional tenets of copyright law, the Committee cannot permit a system developed in the 19th century to encourage the deposit of hardbound books to determine the nature and enjoyment of copyright in the 21st century.

The Committee intends repeal of Sections 411(a) and 412, combined with the bill's incentives to registration and the strengthening of mandatory deposit to result in the best of both worlds: mandatory copyright formalities will be abolished, while the Library of Congress will still receive desired deposits.

The specific incentives added by H.R. 897 are discussed below in two contexts: copyright registration, and, mandatory Library of Congress deposit.

Voluntary registration with the Copyright Office

Section 408 of the Copyright Act currently provides for voluntary registration of a claim to copyright with the Copyright Office. Section 408 serves a number of purposes, two of which are related to the reforms proposed by H.R. 897.

One purpose of Section 408 is to create a public record of claims of copyright and information regarding a copyrighted work, including its ownership and date of creation. Another purpose is to act

as an indirect incentive to bring in deposits that the Library of Congress may wish to acquire. This indirect incentive is accomplished by various means, including giving a certificate of registration the status of *prima facie* evidence of the work's copyrightability and of the facts stated in the certificate; requiring registration in order to give a recorded transfer of copyright priority over subsequent, conflicting transfers; and the existence of Section 412, which conditions the recovery of statutory damages and attorney's fees on registration prior to infringement.

The Librarian of Congress has made a number of suggestions designed to replace the incentive role currently serviced by Section 412. Many of these suggestions have been incorporated in H.R. 897. At the same time, in order to provide a safety net should Library of Congress acquisitions decrease as a result of the repeal of Sections 411(a) and 412, the Librarian is directed to report to Congress three years after the date of enactment regarding how the changes in the registration system made by H.R. 897 have impacted on the Library.

The changes to H.R. 897 at the Librarian's request include: (1) a new short form application; (2) a more liberal examination standard; (3) alternative forms of deposit for copyright registration; (4) a formal appeals process for refusals to register a claim to copyright; (5) provisions clarifying when pre-existing works have to be disclosed on the copyright application form in order to limit sharply the fraud on the Copyright Office defense; and, (6) expansion of the group registration provisions.

All these amendments are intended to make copyright registration more attractive in order to bring in, indirectly, deposits for the benefit of the Library of Congress. Of course, both mandatory deposit under Section 407 and deposit for copyright registration under Section 408 are retained.

A. Short form application

Section 409 currently provides for one basic form of registration application.[25] While this form is not inherently complex, it does require that the claimant provide a substantial amount of information. H.R. 897 provides that the Copyright Office shall make available two forms of registration application, the current form and a new, shorter form. The short form will be available whenever the claimant is a living author, the work is not anonymous or pseudonymous, the work is not made for hire, and the work has not been previously published or registered.

Section 409(a) details the requirements for the long form. Section 409(b) details the requirements for the short form.

Section 409(a) makes a number of amendments with respect to the existing (long form) application:

(1) *Identification of Transfers.*—Section 409(a)(5) will permit the volume and page number of a recordation of a transfer of copyright

[25] To facilitate examination of claims, the Copyright Office does not actually use a single form, but instead uses variants according to subject matter, *e.g.*, Form TX for literary works, Form PA for works of the Performing Arts, Form VA for works of the Visual Arts. There is, though, almost a complete identity between all the forms, and no differences pertinent to the reforms proposed by H.R. 897.

ownership to be listed in the registration. This additional information will increase the value of the Copyright Office's public records.

(2) *Fraud on the Copyright Office.*—Section 409(a)(9) clarifies that in the case of a compilation or derivative work, the claimant need not identify any preexisting work unless the work for which registration is sought is substantially based on or substantially incorporates preexisting material. This amendment should be read in conjunction with the following amendment to Section 410(c): "Any error or omission made in good faith or upon reasonable reliance on counsel shall not affect the validity of the registration. In no case shall an incorrect statement made in an application for copyright registration invalidate the copyright." The purpose of these amendments is to reverse decisions such as *Ashton-Tate Corp.* v. *Ross,* 760 F. Supp. 831 (C.D. Cal. 1990), rescinded, CCH COPR. L. REP. ¶26,714 (C.D. Cal. 1991) and to severely limit the use of the defense of fraud on the Copyright Office. Fraud on the Copyright Office is being routinely asserted by defendants in cases where the alleged infringing work is a compilation or derivative work. Defendants allege the applicant has failed to properly reveal, in Space 6 of the Copyright Office's application form, preexisting material that had been incorporated in the work for which registration is sought. This failure is further alleged to be a deliberate effort to defraud the Copyright Office.

Compendium II of Copyright Office Practices §626.02 indicates that an applicant should fill out Space 6 only if the work for which registration is sought "incorporates substantial amounts of previously registered, previously published, or public domain material * * *." Nevertheless, recently there has been an attempt by some litigants to convert Copyright Office registration practices into patent or trademark-like proceedings through attacks on a certificate of registration for failure to reference insubstantial amounts of preexisting material, and for a host of harmless inaccuracies or errors. This trend, which has wasted judicial resources and needlessly increased the costs of litigation, should be stopped, and the amendments made to Section 409(a)(9) and Section 410(c) are intended to do so. These amendments, when read together, require the claimant of a compilation or derivative work to identify any preexisting work only when the compilation or derivative work is substantially based on or substantially incorporates the preexisting material. Such identification can be the title of the preexisting work or any other shorthand reference to the preexisting work. The applicant need not identify the specific preexisting material that has been incorporated. There is no requirement at all to disclose any preexisting work incorporated in the compilation or derivative work for which registration is sought unless the incorporation of the preexisting material is substantial. Examples of insubstantial incorporation include cases where the compilation or derivative work is merely inspired by another work, or incorporates unprotectable material such as ideas, methods, procedures, processes, algorithms, or any of the other material enumerated in Section 102(b) of title 17, United States Code.

Even where the duty of identification of preexisting material was not met and an error or omission was not made in good faith or upon the reasonable reliance of counsel, the worst penalty that can

be suffered by a claimant is invalidation of the certification of registration. The amendment to Section 410(c) states: "In no case shall an incorrect statement made in an application for copyright registration invalidate the copyright." This, even assuming a claimant commits fraud on the Copyright Office, under no circumstances should a copyright be found invalid on the basis of fraud alone. Where fraud on the Copyright Office is found, the court has two choices: (1) ignore the fraud and decide the issue of copyrightability;[26] or (2) invalidate the registration and direct the claimant to resubmit the application to the Copyright Office *if* the court is of the opinion that had the Copyright Office been aware of the preexisting work it may not have issued the certificate of registration. The amendment to Section 410(c) makes clear that finding the copyright (as opposed to the certificate of registration) invalid based on fraud on the Copyright Office is not an option; (3) Section 409(a)(10) replaces existing Section 409(10), which requires information relevant to the repealed manufacturing clause. Section 409(a)(10) gives applicants the option of including the names, addresses, and telephone numbers of persons or organizations to contact in order to license the copyrighted work.

In order to permit the Copyright Office time to develop and print the new forms called for by Sections 409 (a) and (b), Section 4(b) of the bill shall take effect six months from the date of enactment.

B. Copyright Office examination standard

From 1790, the date of our first copyright statute, until 1870, when the administration of copyright was centralized in the Library of Congress, copyright was obtained by filing a prepublication copy of the title page of the work with the clerk of the United States court where the copyright owner resided. Deposit of copies of the work as published were subsequently made with the Secretary of State.[27] There was no examination for copyrightability since copyright vested upon filing the title page of the work before publication and because the deposit copy that theoretically could be used for examination purposes was given to a different agency, the State Department, which viewed its role as a mere storage facility.

With the centralization of the administration of copyright in the Library of Congress in 1870,[28] the registration and deposit functions were assigned to a single entity. The manner in which copyright was obtained, however—filing a prepublication copy of the title page of the work—remained the same. Deposit was required within ten days after publication. The Librarian of Congress per-

[26] See *Past Pluto Productions Corp.* v. *Dana*, 627 F. Supp. 1435 (S.D.N.Y. 1986). After first calling into question the validity of plaintiff's certificate of registration for failure to alert the Copyright Office to a preexisting work, 627 F. Supp. at 1440 n.5, Judge Leisure went on to find the work uncopyrightable on the merits. The Committee believes this is the correct approach to the issue.

[27] An 1846 Act required copies to be sent to the Smithsonian Institution and the Library of Congress, Act of August 10, 1846, §10, 29th Cong., 1st Sess., 9 Stat. 106, but the courts held this requirement was not a condition of copyright. See *Jollie* v. *Jaques*, 1 Blatchford 618 (1850). The requirement was repealed in 1859, but reinstated in 1865 for the Library of Congress only, this time with a provision stating that failure to deposit after a demand was made by the Librarian of Congress resulted in forfeiture of copyright. Act of March 3, 1865, §3, 38th Cong., 2d Sess., 13 Stat. 540. In 1859, the responsibility for storing deposits of copyrighted works was shifted from the State Department to the Interior Department. Act of February 5, 1859, §8, 35th Cong., 2d Sess., 11 Stat. 380.

[28] Act of July 8, 1870, 41st Cong., 2d Sess., 16 Stat. 212.

formed his duties under the supervision of the Joint Committee on the Library,[29] apparently under an informal arrangement by which the Librarian decided questions of practice but referred questions of law to the Joint Committee. Although the Librarian issued "Directions for Securing Copyrights," in the first challenge to his refusal to register a work, the court held he had no such discretion to refuse registration.[30]

Due to the dramatic increase in deposits with the Library of Congress as a result of the 1870 centralization, the Copyright Office and the position of Register of Copyrights were created in 1897.[31] The 1897 Act did not result in any substantive change in the law, however.

In 1909, an omnibus revision of the copyright statutes was enacted. Copyright was made to vest upon the publication of a work with a proper notice, rather than upon the filing of a prepublication copy of the title page of the work. At the same time, the Register of Copyrights was given statutory authority to "make rules and regulations for the registration of claims to copyright * * *."[32] The 1909 Act did not, though, give the Register express authority to reject applications, a right the Register had sought in earlier drafts.[33] The authority of the Register of Copyrights to refuse registration was not tested until 1940,[34] and was not unequivocally established until the 1976 Act, which expressly granted the right in Section 410(b).

Nothwithstanding Section 410 of title 17, United States Code, it is the courts which have been vested by Congress with the ultimate determination of copyrightability, not the Copyright Office.[35] In determining whether to register a claim to copyright, the Copyright Office should be guided by court decisions on what constitutes an original work of authorship.[36]

The Copyright Office has not adopted by regulation an examination standard. The Office's first Examining Division manual, issued in 1950, contains the following philosophy on examining:

> Where, as here, valuable property interests are at stake and there is no practical appeal, every effort must be made to guard against an abuse of authority. Accordingly, instead of requiring an applicant to prove his case, the examiners are prepared to prove a case for rejection before they make such a recommendation. We will register material which we feel a court *might* reasonably hold to be copyrightable, even though, personally, we feel that it is not subject to copyright.
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> The results of a contrary practice are fairly obvious. Most applicants are not represented by counsel. Denials of

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[29] Act of July 8, 1870, § 85.

[30] *United States* v. *Everson*, 28 Wash. L. Rep. 546 (Sup. Ct. D.C. 1898).

[31] Act of February 19, 1897, 54th Cong., 2d Sess., 29 Stat. 545.

[32] 17 U.S.C. § 207 (1909). A similar provision is found in Section 702 of the 1976 Act.

[33] See Berger, "Authority of the Register of Copyrights to Reject Applications for Registration," Copyright Office Study No. 18, 86th Cong., 2d Sess., 93 (Senate Comm. Print 1960). See also Kaplan, "The Registration of Copyright," Copyright Office Study No. 17, 86th Cong., 2d Sess. 27–28 (Senate Comm. Print 1960).

[34] *King Features Syndicate, Inc.* v. *Bouve*, 48 USPQ 237 (D.D.C. 1940). See also *Bouve* v. *Twentieth Century-Fox Film Corp.*, 122 F 2d 51 (2d Cir. 1941).

[35] H.R. Rep. No. 94–1476, 94th Cong., 2d Sess. 51 (1976).

[36] See e.g., *Feist Publications, Inc.* v. *Rural Telephone Service*, 499 U.S. 340 (1991).

> registration or abuse of discretion may not be protested since the applicant may feel that he has a right to rely upon the "word of the Government." Even the situation of an applicant who is fully represented is not much better. He can go to court, but the courts are very reluctant to grant mandamus or to require an administrative officer to take affirmative action. In addition, in dealing with material like motion pictures, books, newspapers, etc., the element of time is very important. In [some] cases, it [takes] several years before the [mandamus] case [ ] [is] finally decided.
>
> This would indicate that for all practical purposes the decision made in the Examining Division is usually final. It is not enough, therefore, to wait for protests; the Office must make every effort to guard against any abuse of authority.[37]

H.R. 897 is designed to restore the Copyright Office's examining practices to those set forth in the 1950 Examining Division Manual. To accomplish this goal, Section 410 has been amended using language from the manual. Under the amendment, the Register of Copyrights is empowered to refuse to register a claim to copyright only if he or she determines, in accordance with the provisions of title 17, that there is no reasonable possibility that a court would hold the work to be copyrightable subject matter. The Copyright Office is thus directed to defer to the courts, not vice versa.

It is important to note that this statutory examining standard does not codify the Copyright Office's existing "rule of doubt" practice. Under the rule of doubt, the Copyright Office will register a claim even though the Office has a reasonable doubt about the validity of the copyright.[38] When a rule of doubt registration is made, the Office sends a letter to the applicant cautioning that, in its opinion, the claim may not be valid.[39] The rule of doubt thus expresses the Office's own view about the validity of the claim. The statutory standard incorporated in H.R. 897, however, directs the Copyright Office to register the claim unless a court might not reasonably be expected to find the work copyrightable: doubts that the Office may have are not relevant if the courts have not expressed such doubts. In such a situation, a cautionary letter should not be sent.

C. Appeals from refusal to register

Another change to Copyright Office practices made by H.R. 897 is the requirement that the Copyright Office establish, and publish in the Federal Register, a formal procedure by which appeals may be taken from a refusal to register a claim to copyright. Currently, Compendium II of Copyright Office Practices § 606.04 permits an applicant whose claim has been refused to request that the Office reconsider its action. The request is first heard by the head of the section that rejected the application. A further appeal may be taken to the Chief of the Examining Division.

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[37] Copyright Office Examining Division Manual, Library of Congress Departmental & Divisional Manuals No. 7–B at 38–39 (1950).
[38] Compendium II of Copyright Office Practices § 605.05.
[39] Compendium II of Copyright Office Practices § 605.06.

This process of reconsideration is not widely known or publicized and may not comply with the requirements of the Administrative Procedure Act. Section 701(d) of the Copyright Act states that with the exception of the making of copies of deposits, all actions taken by the Register of Copyrights under title 17 are subject to the provisions of the APA.[40] Notwithstanding this statutory provision, the Copyright Office has taken the position that the Office is not subject to the APA because it is not an agency as defined in the APA. The Committee disagrees.

Currently, however, the only area where the Office's position has made a difference is in its lack of a formal appellate procedure for refusals to register claims to copyright. Accordingly, H.R. 897 requires the Office to establish and publish in the Federal Register a formal procedure by which appeals may be taken from refusals to register. The procedure shall include a final appeal to the Register of Copyrights. This final appeal cannot be delegated to a lower official. Although the amendment does not require it, a compilation of decisions of the Register regarding refusals to register would be of use to the public.

D. Alternative forms of deposit

The treatment of copyright registration as an adjunct to Library of Congress acquisition policy has led to a tendency to make the deposit requirements for copyright registration (§ 408) identical to those for mandatory Library deposit (§ 407). While there are certainly a number of exceptions to this general rule, it is also true that the Copyright Office has been slow to experiment with ways to fulfill its examination function short of requiring the "best edition" of the work. Section 408(c)(1) has thus been amended to authorize the Register of Copyrights to identify cases where the purposes of examination, registration, and deposit under Section 408 can adequately be served by deposit of descriptive material only, or by a written obligation to deposit copies at a later date.

E. Group registration

Section 408(c)(2) currently requires the Register of Copyrights to establish by regulation group registration for individual contributions to periodicals, including newspapers, published by the same individual author within a twelve-month period. The Register of Copyrights has only recently issued regulations under this section.[41]

In order to further liberalize the group registration provisions, the Librarian of Congress proposed that Section 408(c)(2) be expanded to include all collective works published within a five-year period. H.R. 897 adopts the Librarian's recommendation. Since such expanded registration may impose increased costs on the Copyright Office, the amendment also permits the Register to exercise the existing authority in Section 708(a)(10) to charge fees covering such costs.

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[40] See also H.R. Rep. No. 94–1476, 94th Cong., 2d Sess. 171 (1976) ("Under an amendment to section 701 adopted by the Committee, the Copyright Office is made fully subject to the Administrative Procedure Act. . .").

[41] See 37 CFR § 202.3; 55 Fed. Reg. 50556 (December 7, 1990); 57 Fed. Reg. 39615 (September 1, 1992).

Other Library of Congress/Copyright Office reforms

H.R. 897 also makes a number of changes designed to improve the Copyright Office registration system and the records of the Library of Congress. These include: (1) amending Section 410(a) to state explicitly that a certificate of registration only covers those parts of the work that are copyrightable and in which the copyright owner has a right to claim ownership; (2) requiring the Librarian of Congress to publish an annual list of the types of works for which Section 407 deposits will be sought; (3) requiring the Librarian to maintain a record and database of copies deposited under Section 407; and (4) requiring the Register of Copyrights to hold annual public hearings on the Section 408 deposit and registration requirements.

In order to further ensure that Library of Congress deposits are not indirectly reduced by repeal of Sections 411(a) and 412, H.R. 897 adopts a number of additional suggestions made by the Librarian of Congress. These include clarifying that the obligation to deposit arises without any need for prior notification or demand; giving the Libarian rather than the Register of Copyrights authority over enforcement of the provision; permitting the government to recover an amount equivalent to its attorney's fees if it has to bring suit to enforce its right to receive deposit copies; and, permitting Section 407 mandatory Library of Congress deposits to be used to satisfy the deposit requirement of copyright registration under Section 408.

Section 9 of the amendment directs the Librarian of Congress to undertake a study to lay the foundation for the eventual expansion of Section 407 to include works that are technically unpublished, but which are, nevertheless, publicly disseminated. A report on the study is to be delivered to the Congress within 18 months of the date of enactment. The Committee agrees with the Librarian of Congress that the Library should be able to demand material which, though technically unpublished, is still available to the general public. In many cases, copyright owners do not retain this material and the Library of Congress will be the sole repository. The Copyright Act needs to be amended in order to ensure that the Library will receive these works.

It is not feasible to do so immediately, though. There are many difficult issues to be resolved, some of which relate to the information superhighway and some of which relate to other concerns of copyright owners. These are real problems that cannot be solved overnight. They require study and experimentation. The Committee strongly encourages copyright owners to cooperate fully with the Librarian so that a consensus may be developed for future amendment.

Miscellaneous issues

H.R. 897 deletes two provisions contained in the bill as introduced. First, appointment of the Register of Copyrights by the President with the advice and consent of the Senate. This provision was included in the bill as introduced in part because of a constitutional concern about the Register appointing and overseeing the arbitration panels, a concern which has been separately met in H.R. 2840 by having the Librarian of Congress perform these duties.

Second, the provision in H.R. 897 as introduced reversing *National Peregrine, Inc.* v. *Capitol Federal Savings & Loan,* 116 Bank. Rep. 194 (Bankr. C.D. Cal. 1990) has been deleted in order to study whether a single system of recordation of transfers applicable to copyrights, trademarks, and patents should be developed.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 states that the short title of the Act is the "Copyright Reform Act of 1993."

Section 2. Deposit of copies or phonorecords for the Library of Congress

Section 2 of H.R. 897 contains amendments to Section 407, title 17 United States Code. Under current law, Section 407 requires the owner of copyright or of the exclusive right of publication in a work published in the United States to deposit for the benefit of the Library of Congress within three months of the date of publication two complete copies or phonorecords of the best edition of the work. Section 407 is an important source of material for the collections of Library of Congress, and its requirement is separate from the deposit requirements of Section 408, which governs voluntary copyright registration.

In light of the repeal of Sections 411(a) and 412 by Section 6 of this bill, and in light of experience with Section 407 over the last 15 years, H.R. 897 incorporates a number of changes to Section 407 designed to strengthen it and make it more efficient.

These changes include: (1) giving the Librarian of Congress (rather than, at present, the Register of Copyrights) the authority for enforcing the obligation;[42] (2) requiring the Librarian each November to publish in the Federal Register a statement of the categories of works the Library wishes to acquire during the next calendar year. The statement shall also describe the types of works for which only one copy need be deposited, the types of works for which the Section 407 requirement may be fulfilled by placing the Library of Congress on a subscription list, and the types of works which shall be exempt from the Section 407 requirements; (3) making the obligation arise at the date of first publication, rather than three months after deposit (§ 407(a)), and ensuring that the obligation arises immediately upon such publication and not upon any demand made by the Librarian (§ 407(f)); (4) clarifying that a demand for compliance can be for a body of works as well as for an individual work; (5) requiring that a demand for compliance specify a date for compliance; (6) clarifying that the fines for failure to comply with a demand for deposit are civil in nature; (6) subjecting persons, who in a civil action brought by the United States Government are found to have failed to comply with their Section 407 obligation, to pay an amount equal to a reasonable attorney's fee for all costs of the United States in pursuing the demand.

Section 2 also makes two changes in Section 407 designed to increase the utility of the Library's records to the public. First, in

[42] The Librarian is, however, permitted to delegate his responsibilities under Section 407 to the Register of Copyrights or any other officer or employee of the Librarian of Congress. § 407(i).

new Section 407(g), the Librarian of Congress is required to establish and maintain public records of copies deposited under Section 407. Second, the Librarian is required to establish and maintain an electronic database containing the records of deposits made on or after October 1, 1995. This database shall be made available to the public through one or more international information networks. These networks are not, however, to be the exclusive channel for public access to these records. The records are to be available in order formats upon the same terms and conditions as other public information currently disseminated by the Copyright Office.

Section 3. Voluntary copyright registration

Section 3 contains two amendments to the optional deposit provisions in Section 408 of title 17, United States Code, which concerns voluntary copyright registration. First, the Register is authorized to identify classes of works for which registration may be made on the basis of a deposit of descriptive material or by a written obligation to deposit copies at a later date. Second, the group registration provisions of Section 408(c)(2), which currently are limited to works written by a single individual first published as contributions to periodicals, including newspapers, within a twelve-month period, is liberalized to include all contributions to collective works published within a five-year period. In the event the costs to the Copyright Office from such liberalized registration are increased, the Register of Copyrights is permitted to utilize the existing authority in Section 708(a)(10) of title 17, United States Code, to charge a fee that will cover those increased costs.

Section 3 also creates a new Section 408(f), requiring the Register of Copyrights, not later than one year after the effective date of the subsection, and at one year intervals thereafter, to hold public hearings to consider proposals to amend the regulations and practices of the Copyright Office in order to eliminate deposits that are unnecessary for copyright registration or the collections of the Library of Congress, and to hear proposals to simplify registration procedures.

Section 4. Applications for copyright

There is currently one basic form of copyright registration, the contents of which are specified in Section 409 of title 17, United States Code. Section 4 creates two basic forms of application, found respectively in new Section 409(a) (long form) and 409(b) (short form). The long form is the current form with a few changes. Those changes are: (1) Section 409(a)(5), which concerns applications submitted by transferees, is amended to require the volume and page number of any recordation made in the Copyright Office of the transfer document; (2) Section 409(a)(9), which concerns applications for compilations and derivative works is amended to clarify that the applicant need identify any preexisting material only if the compilation or derivative work is substantially based on or substantially incorporates such preexisting material. This clarification is intended to cut back on the defense of fraud on the Copyright Office, which the Committee believes has been misapplied to cases where de minimis amounts of preexisting material are incorporated in a compilation or derivative work, or harmless errors have been

made;[43] (3) Existing Section 409(10), which concerns the manufacturing clause, is replaced since the clause was repealed in 1986. New Section 409(a)(10), the replacement, gives the applicant the option of providing the names, addresses, and telephone numbers of persons or organizations that potential users of the work should contact concerning permissions or licenses to use the work, and any information with respect to the terms of such permissions or licenses.

New Section 409(b) governs the new short-form application. Use of the short form is limited to claimants who are living authors and to works that are not anonymous or pseudonymous, or works made for hire, and which have not been previously published or registered. (§ 409(b)(1)). Section 409(b)(2) spells out the information the short form application shall include, such as the name and address of the author, the title of the work, the nationality or domicile of the author, and the year the work was created.

In order to give the Copyright Office sufficient time to develop the new forms, Section 4 of H.R. 897 will not go into effect until 6 months from the date of enactment.

Section 5. Registration of claims to copyright

Section 5 contains amendments to Section 410 of title 17, United States Code. Section 410(a) currently governs the circumstances under which the Register of Copyrights may refuse to issue a certificate of registration. Section 410(b) currently governs the circumstances under which the Register of Copyrights may refuse to register a claim to copyright.

Section 5 merges existing Sections 410(a) and (b) into a revised Section 410(a), which directs the Register of Copyrights to register a claim to copyright unless there is no reasonable possibility that a court would hold the work for which registration is sought to be copyrightable, or, as under existing law, if the Register determines that the claim is invalid for any other reason. In all other circumstances, the Register is directed to register the claim. Section 410(a) is also amended to clarify that when a certificate of registration is issued, the certificate only covers those component parts of the work that are both the subject matter of copyright and owned by the claimant. For example, a certificate of registration on a scientific treatise would not extend to a formula contained therein, although it would extend to an original explanation of the formula.

Section 410(b) of title 17, United States Code, as amended directs the Register of Copyrights to establish and publish in the Federal Register a formal appellate procedure for refusals to register claims to copyright, including final appeal to the Register.

Section 410(c) of title 17, United States Code, is also amended to provide that errors or omissions made in good faith or based upon reasonable reliance of counsel shall not affect the validity of a copyright registration. It also provides that no incorrect statement, even one made fraudulently, shall invalidate the copyright. These amendments are necessary to counteract a disturbing trend of litigants asserting fraud on the Copyright Office for minor errors or

[43] *See e.g., Ashton-Tate Corp.* v. *Ross*, 760 F. Supp. 831 (C.D. Cal. 1990), rescinded, CCH COPR L. REP. ¶ 26,714 (C.D. Cal. 1991).

omissions in a copyright application form, and, confusion among some courts over the important distinction between a certificate of registration—issued by the Copyright Office—and a copyrightable work, which vests automatically upon creation and fixation.

Section 6. Registration as a prerequisite to suit and the award of statutory damages and attorney's fees

H.R. 897 repeals existing Section 411(a), which, except for copyright owners of works from Berne Convention countries other than the United States, requires copyright owners to register their claim of copyright with the Copyright Office before instituting an action for infringement. The Committee believes this provision unfairly discriminates against United States authors and is not an effective incentive to Library of Congress acquisition goals. The requirements of current Section 411(b), which concern works consisting of sounds, images, or both, which are first fixed simultaneously with their transmission, are retained, with only slight changes in the phrasing of the requirements. These changes are not intended to have any substantive effect on the provision.

Section 6 also repeals Section 412 of title 17, United States Code, which bars the recovery of statutory damages and attorney's fees to copyright owners unless they have registered their work before an infringement occurs.[44] This provision, intended as an indirect incentive for Library of Congress acquisition of copyrighted material, has instead become a shield for users of copyrighted works to ignore meritorious claims of copyright owners, safe in the realization that in most cases it will be economically impossible to pursue a claim of infringement without the availability of the remedies of statutory damages and attorney's fees. The Committee believes such misuse of the statute should not continue.

The conditioning of these remedies upon the satisfaction of a formality, moreover, many have negative international implications. Foreign countries may choose to impose their own formalities in an effort to deny United States authors adequate and effective protection, with Section 412 being held up as justification. In an era when American authors increasingly rely on foreign markets, domestic U.S. copyright law should not be used to deny American authors the opportunity to fully receive the benefits of foreign markets.

Section 7. Remedies for infringement

With repeal of Sections 411(a) and 412, copyright owners will be able, as in other civil litigation, to go directly into court, file a complaint, and receive all of the remedies provided in chapter 5 of title 17, United States Code, without first receiving a certificate of registration from the Copyright Office. Some concern has been expressed that repeal of Sections 411(a) and 412 may lead to increased litigation, or, at least to increased exposure to statutory damages and attorney's fees. The Committee does not believe that repeal of these sections will lead to a noticeable increase in copyright infringement suits. Nevertheless, the Committee recognizes that some individuals may not be familiar with the copyright law,

[44] A three-month grace period is provided for published work.

and may, as a result, unknowingly run afoul of its provisions. Accordingly, Section 7 amends the innocent infringer provision of Section 504(c)(2) of title 17, United States Code, which currently permits courts, in their discretion, to reduce the award of statutory damages to not less than $200, by permitting the courts to further reduce the award to as little as zero.

Section 8. Notification of filing and determination of copyright infringement actions.

Section 508 of title 17, United States Code, presently requires the clerks of the United States district courts, within one month after the filing of an action brought under title 17, to send written notification thereof to the Register of Copyrights. A similar obligation is imposed for the entry of final orders or judgments in the action. The purpose of these provisions is to make available to the public records of litigation involving copyrighted works.

The Copyright Office has informed the Committee the clerks of the courts do not routinely comply with the section. In order to provide an additional source of information involving litigation over copyrighted works, Section 8 extends the obligations of Section 508 to the party filing the action. The requirement remains for the clerks of the courts.

Section 9. Study on mandatory deposit

Section 9 requires the Librarian of Congress, upon enactment, to begin a study of the mandatory deposit provisions of Section 407 of title 17, United States Code, in order to determine how to implement an amendment to that section extending the mandatory deposit provisions to unpublished, but publicly transmitted works, including computer programs and online databases. The study, to be undertaken in consultation with the Register of Copyrights and any affected interests, may include practical tests and pilot programs designed to discover how such implementation may be accomplished. The report is to be delivered to the Congress no later than 18 months after the date of enactment of H.R. 897, and shall include recommendations the Librarian has for safeguarding the interests of copyright owners, fulfilling the present and future needs of the Library, as well as any legislation that may, in the Librarian's opinion, be necessary to accomplish the Librarian's recommendations.

Section 10. Study on the effects of registration and deposit provisions

In order to ensure that the mix of incentives added by H.R. 897 to encourage copyright registration and deposit with the Library of Congress adequately safeguard the interests of the Library of Congress after repeal of Sections 411(a) and 412, Section 10 directs the Librarian of Congress, after consultation with the Register of Copyrights, to undertake a study on the impact of the changes made by the bill on the acquisitions of the Library of Congress and the operations of the Copyright Office. The Librarian must report to the Congress on the results of the study no later than 3 years after the date of enactment of H.R. 897. The report may contain any recommendations the Librarian may have. The Librarian is also given

the authority to conduct future such studies at his or her discretion and to report the results of such studies to the Congress.

Section 11. Conforming amendments

Section 11 contains conforming amendments.

Section 12. Additional technical amendments

Section 12 contains technical amendments correcting various errors that have crept into title 17, United States Code, in the last 15 years.

Section 13. Effective date

Section 13(a) provides that except for Section 4(b), which requires the Copyright Office to issue new applications forms 6 months after the date of enactment, the Copyright Reform Act of 1993 and the amendments contained therein take place on the date of enactment.

Section 13(b) provides that the amendments made by Section 6, which repeal Sections 411(a) and 412 of title 17, United States Code, shall not affect any action brought under title 17, United States Code, before the date of the enactment of the Copyright Reform Act of 1993. This means that copyright owners who have already filed infringement actions on the date of enactment must comply with the provisions of Sections 411(a) and 412 if those sections are otherwise applicable. Actions brought on or after the date of enactment do not have to comply with Sections 411(a) or 412 regardless of whether the work was created before that date or the cause of action arose before that date.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of the report.

COMMITTEE ON GOVERNMENT OPERATIONS OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Operations were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives is inapplicable because the proposed legislation does not provide new budgetary authority or increased tax expenditures.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the bill will have no significant inflationary impact on prices or costs in the national economy.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(C)(3) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill H.R. 897, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 18, 1993.

Hon. JACK BROOKS,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 897, the Copyright Reform Act of 1993, as ordered reported by the House Committee on the Judiciary on November 17, 1993. CBO estimates that implementing H.R. 897 would cost the federal government about $300,000 over the next four years. Because enactment of the bill could affect direct spending, pay-as-you-go procedures would apply.

H.R. 897 would make changes in the requirement to deposit copies of copyrighted or otherwise protected works in the Library of Congress. The bill would make those who neglect to make the required deposit liable for the reasonable cost to the federal government of enforcing the requirement. In addition, H.R. 897 would remove the requirement to register a work before instituting an action for infringement of copyright, and would prevent good-faith errors in a copyright application from affecting the validity of the copyright. The bill would require the Copyright Office to establish a database of deposits made under these requirements, and another database of all deposits, which would be made available over the Internet network. It would broaden the amount of information required to be kept by the Copyright Office on copyright owners, and would require the Copyright Office to create a short copyright application form to be used in certain circumstances. It also would require the Copyright Office to hold annual hearings on improving its regulations and practices with respect to the deposit of works. Finally, the bill would require the Copyright Office to prepare several studies and reports.

CBO estimates that increasing the amount of information to be kept on copyright holders would require the Copyright Office to add capacity to an already-existing database, at a cost of approximately $120,000 in 1994. Creating the short copyright application form would cost approximately $100,000 in 1994, mostly for design and printing costs. Finally, we estimate that the studies and reports mandated by the bill would cost approximately $100,000 over the 1994–1997 period.

Eliminating the requirement to register a work before instituting an infringement action could affect the collections of copyright fees because if fewer works are registered, less fees will be collected. CBO estimates that any loss of such fees would be negligible, as we believe that most pote4ntial copyright holders would seek the

additional protection of a copyright. Therefore, any pay-as-you-go effects would be negligible.

CBO estimates that enactment of H.R. 897 would result in no cost to state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is John Webb.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 17, UNITED STATES CODE

Chap.		Sec.
1.	Subject Matter and Scope of Copyright	101
2.	Copyright Ownership and Transfer	201
3.	Duration of Copyright	301
	* * * * * * *	
[6.	Manufacturing Requirement and Importation	601]
6.	*Manufacturing Requirements and Importation*	*601*
7.	Copyright Office	701
8.	Copyright Royalty Tribunal	801
[9.	Protection of semiconductor chip products	901]
9.	*Protection of Semiconductor Chip Products*	*901*
10.	*Digital Audio Recording Devices and Media*	*1001*

CHAPTER 1—SUBJECT MATTER AND SCOPE OF COPYRIGHT

* * * * * * *

§ 101. Definitions

Except as otherwise provided in the this title, as used in this title, the following terms and their variant forms mean the following:

An "anonymous work" is a work on the copies or phonorecords of which no natural person is identified as author.

An "architectural work" is the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features.

* * * * * * *

[The "country of origin" of a Berne Convention work, for purposes of section 411, is the United States if—

[(1) in the case of a published work, the work is first published—

[(A) in the United States;

[(B) simultaneously in the United States and another nation or nations adhering to the Berne Convention, whose

law grants a term of copyright protection that is the same as or longer than the term provided in the United States;

[(C) simultaneously in the United States and a foreign nation that does not adhere to the Berne Convention; or

[(D) in a foreign nation that does not adhere to the Berne Convention, and all of the authors of the work are nationals, domicilaries, or habitual residents of, or in the case of an audiovisual work legal entities with headquarters, in, the United States;

[(2) in the case of an unpublished work, all the authors of the work are nationals, domiciliaries, or habitual residents of the United States, or, in the case of an unpublished audiovisual work, all the authors are legal entities with headquarters in the United States; or

[(3) in the case of a pictorial, graphic, or sculptural work incorporated in a building of structure, the building of structure is located in the United States.

For the purposes of section 411, the "country of origin" of any other Berne Convention work is not the United States.]

* * * * * * *

"Registration", for purposes of sections 205(c)(2), 405, 406, 410(d), 411, [412,] and 506(e), means a registration of a claim in the original or the renewed and extended term of copyright.

* * * * * * *

To perform or display a work "publicly" means—

(1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or

(2) to transmit or otherwise communicate a performance or display of the work to a place specified by [clause] *paragraph* (1) or to the public, by means of any device or [process] *process*, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.

* * * * * * *

§ 108. Limitations on exclusive rights: Reproduction by libraries and archives

(a) * * *

* * * * * * *

(e) The rights of reproduction and distribution under this section apply to the entire work, or to a substantial part of it, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, if the library or archives has first determined, on the basis of a reasonable investigation, that a copy or phonorecord of the copyrighted work cannot be obtained at a [fair] *fair* price, if—

(1) the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or

phonorecord would be used for any purpose other than private study, scholarship, or research; and

* * * * * * *

§ 109. Limitations on exclusive rights: Effect of transfer of particular copy or phonorecord

(a) * * *
(b)(1) * * *
(2)(A) * * *

(B) Not later than three years after the date of the enactment of the Computer Software Rental Amendments Act of 1990, and at such times thereafter as the Register of [Copyright] *Copyrights* considers appropriate, the Register of Copyrights, after consultation with representatives of copyright owners and librarians, shall submit to the Congress a report stating whether this paragraph has achieved its intended purpose of maintaining the integrity of the copyright system while providing nonprofit libraries the capability to fulfill their function. Such report shall advise the Congress as to any information or recommendations that the Register of Copyrights considers necessary to carry out the purpose of this subsection.

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CHAPTER 3—DURATION OF COPYRIGHT

* * * * * * *

§ 304. Duration of copyright: Subsisting copyrights

(a) * * *

* * * * * * *

(c) TERMINATION OF TRANSFERS AND LICENSES COVERING EXTENDED RENEWAL TERM.—In the case of any copyright subsisting in either its first or renewal term on January 1, 1978, other than a copyright in a work made for hire, the exclusive or nonexclusive grant of a transfer or license of the renewal copyright or any right under it, executed before January 1, 1978, by any of the persons designated by [the] subsection (a)(1)(C) of this section, otherwise than by will, is subject to termination under the following conditions:

(1) * * *

* * * * * * *

CHAPTER 4—COPYRIGHT NOTICE, DEPOSIT, AND REGISTRATION

Sec.
401. Notice of copyright: Visually perceptible copies.
402. Notice of copyright: Phonorecords of sound recordings.
403. Notice of copyright: Publications incorporating United States Government works.

* * * * * * *

[411. Registration and infringement actions.
[412. Registration as prerequisite to certain remedies for infringement.]

411. Registration and infringement actions for certain works.

* * * * * * *

§ 405. Notice of copyright: Omission of notice on certain copies and phonorecords

(a) * * *

(b) EFFECT OF OMISSION ON INNOCENT INFRINGERS. Any person who innocently infringes a copyright, in reliance upon an authorized copy or phonorecord from which the copyright notice has been omitted and which was publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988, incurs no liability for actual or statutory damages under section 504 for any infringing acts committed before receiving actual notice that registration for the work has been made under section 408, if such person proves that he or she was misled by the omission of notice. In a suit for infringement in such a case the court may allow or disallow recovery of any of the infringer's profits attributable to the infringement, and may enjoin the continuation of the infringing undertaking or may require, as a condition [or] *for* permitting the continuation of the infringing undertaking, that the infringer pay the copyright owner a reasonable license fee in an amount and on terms fixed by the court.

* * * * * * *

§ 407. Deposit of copies or phonorecords for Library of Congress

[(a) Except as provided by subsection (c), and subject to the provisions of subsection (e), the owner of copyright or of the exclusive right of publication in work published in the United States shall deposit, within three months after the date of such publication—]

(a) REQUIRED DEPOSITS.—Except as provided in subsection (c), the owner of copyright in a work or of the exclusive right of publication of a work in the United States shall deposit, after the earliest date of such publication—

(1) two complete copies of the best edition; or

(2) if the work is a sound recording, two complete phonorecords of the best edition, together with any printed or other visually perceptible material published with such phonorecords.

Neither the deposit requirements of this subsection nor the acquisition provisions of subsection (e) are conditions of copyright protection.

(b) *DEPOSIT IN COPYRIGHT OFFICE.*—The required copies or phonorecords shall be deposited in the Copyright Office for the use or disposition of the Library of Congress. The Register of Copyrights shall, when requested by the depositor and upon payment of the fee prescribed by section 708, issue a receipt for the deposit. *A deposit made under this section may be used to satisfy the deposit requirements of section 408.*

(c) *REGULATIONS.*—The [Register of Copyrights] *Librarian of Congress* may by regulation exempt any categories of material from the deposit requirements of this section, or require deposit of only

one copy or phonorecord with respect to any categories. Such regulations shall provide either for complete exemption from the deposit requirements of this section, or for alternative forms of deposit aimed at providing a satisfactory archival record of a work without imposing practical or financial hardships on the depositor, where the individual author is the owner of copyright in a pictorial, graphic, or sculptural work and (i) less than five copies of the work have been published, or (ii) the work has been published in a limited edition consisting of numbered copies, the monetary value of which would make the mandatory deposit of two copies of the best edition of the work burdensome, unfair, or unreasonable.

(d) [At any time after publication of a work as provided by subsection (a), the Register of Copyrights] *PROCEDURES.—(1) During November of each year, the Librarian of Congress shall publish in the Federal Register a statement of the categories of works of which the Library of Congress wishes to acquire copies or phonorecords under this section during the next calendar year. The Librarian shall review such statement annually in light of the changes in the Library's policies and procedures, changes in technology, and changes in patterns of publication. The statement shall also describe—*

(A) the types of works of which only one copy or phonorecord need be deposited;

(B) the types of works for which the deposit requirements may be fulfilled by placing the Library of Congress on a subscription list; and

(C) the categories of works which are exempt under subsection (c) from the deposit requirements.

(2) At any time after publication in the United States of a work or body of works, the Librarian of Congress may make written demand for the required deposit on any of the persons obligated to make the deposit under subsection (a). *Such demand shall specify a date for compliance with the demand.* Unless deposit is made within three months after the demand is received, the person or persons on whom the demand was made are liable *in a civil action*—

[(1)] *(A)* to a fine of not more than $250 for each work; and

[(2)] *(B)* to pay into a specially designated fund in the Library of Congress the total retail price of the copies or phonorecords demanded, or, if no retail price has been fixed, the reasonable cost [of] *to* the Library of Congress of acquiring them; and

[(3)] *(C)* to pay a fine of $2,500, in addition to any fine or liability imposed under [clauses (1) and (2)] *subparagraphs (A) and (B)*, if such person willfully or repeatedly fails or refuses to comply with such a demand.

In addition to the penalties set forth in subparagraphs (A), (B), and (C), the person against whom an action is brought under this paragraph shall be liable in such action for all costs of the United States in pursuing the demand, including an amount equivalent to a reasonable attorney's fee.

(e) *TRANSMISSION PROGRAMS.*—With respect to transmission programs that have been fixed and transmitted to the public in the United States but have not been published, the [Register of Copy-

rights shall, after consulting with the Librarian of Congress and other interested organizations and officials,] *Librarian of Congress shall, after consulting with interested organizations and officials,* establish regulations governing the acquisition, through deposit or otherwise, of copies or phonorecords of such programs for the collections of the Library of Congress.

(1) * * *

(2) Such regulations shall also provide standards and procedures by which the [Register of Copyrights] *Librarian of Congress* may make written demand, upon the owner of the right of transmission in the United States, for the deposit of a copy or phonorecord of a specific transmission program. Such deposit may, at the option of the owner of the right of transmission in the United States, be accomplished by gift, by loan for purposes of reproduction, or by sale at a price not to exceed the cost of reproducing and supplying the copy or phonorecord. The regulations established under this clause shall provide reasonable periods of not less than three months for compliance with a demand, and shall allow for extensions of such periods and adjustments in the scope of the demand or the methods for fulfilling it, as reasonably warranted by the circumstances. Willful failure or refusal to comply with the conditions prescribed by such regulations shall subject the owner of the right of transmission in the United States to liability for an amount, not to exceed the cost of reproducing and supplying the copy or phonorecord in question, to be paid into a specially designated fund in the Library of Congress.

(f) OBLIGATION TO MAKE DEPOSITS.—Immediately upon the publication in the United States of any work in which copyright subsists under this title, it shall be the obligation of the persons identified in subsection (a) with respect to that work, subject to the requirements and exceptions specified in this section, to deposit, for the use of disposition of the Library of Congress, the copies or phonorecords specified in such subsection. The obligation to make such deposit arises without any prior notification or demand for compliance with subsection (a).

(g) RECORDS OF DEPOSITS.—The Librarian of Congress shall establish and maintain public records of the receipt of copies phonorecords deposited under this section.

(h) DATABASE OF DEPOSIT RECORDS.—The Librarian of Congress shall establish and maintain an electronic database containing its records of all deposits made under this section on and after October 1, 1995, and shall make such database available to the public through one or more international information networks.

(i) DELEGATION AUTHORITY.—The Librarian of Congress may delegate to the Register of Copyrights or other officer or employee of the Library of Congress any of the Librarian's responsibilities under this section.

§ 408. Copyright registration in general

(a) * * *

* * * * * * *

(c) ADMINISTRATIVE CLASSIFICATION AND OPTIONAL DEPOSIT.—

(1) The Register of Copyrights is authorized to specify by regulation the administrative classes into which works are to be placed for purposes of deposit and registration, and the nature of the copies or phonorecords to be deposited in the various classes specified. The regulations may require or permit, for particular classes, the deposit of identifying material instead of copies of phonorecords, the deposit of only one copy or phonorecord where two would normally be required, or a single registration for a group of related works. This administrative classification of works has no significance with respect to the subject matter of copyright or the exclusive rights provided by this title. *The Register is also authorized to specify by regulation classes of material in which registration may be made without deposit of any copy or phonorecord, in cases in which the Register determines that the purposes of examination, registration, and deposit can be adequately served by deposit of descriptive material only, or by a written obligation to deposit copies or phonorecords at a later date.*

(2) Without prejudice to the general authority provided under clause (1), the Register of Copyrights shall establish regulations specifically permitting a single registration for a group of works by the same individual author, all first published as contributions to [periodicals, including newspapers, within a twelve-month period, on the basis of a single deposit, application, and registration fee, under the following conditions:

[(A) if the deposit consists of one copy of the entire issue of the periodical, or of the entire section in the case of a newspaper, in which each contribution was first published; and

[(B) if the application identifies each work separately, including the periodical containing it and its date of first publication.] *Collective works, including periodicals, published within a 5-year period, on the basis of a single deposit and application and upon payment of any special registration fee imposed under section 708(a)(10), if the application identifies each work separately, including the collective work containing it and its date of first publication.*

* * * * * * *

(f) COPYRIGHT OFFICE HEARINGS.—Not later than 1 year after the effective date of this subsection, and at 1-year intervals thereafter, the Register of Copyrights shall hold public hearings to consider proposals to amend the regulations and practices of the Copyright Office with respect to the deposit of works in order to eliminate deposits that are unnecessary for copyright examination or the collections of the Library of Congress, and in order to simplify the registration procedures.

§ 409. Application for copyright registration

[The application] *(a) CONTENTS OF APPLICATION.*—The application for copyright registration shall be made on a form prescribed by the Register of Copyrights and shall include—

(1) * * *

* * * * * * *

(5) if the copyright claimant is not the author, a brief statement of how the claimant obtained ownership of the copyright, *and if the document by which ownership was obtained has been recorded in the Copyright Office, the volume and page number of such recordation;*

* * * * * * *

[(9) in the case of a compilation or derivative work, an identification of any preexisting work or works that it is based on or incorporates, and a brief, general statement of the additional material covered by the copyright claim being registered;

[(10) in the case of a published work containing material of which copies are required by section 601 to be manufactured in the United States, the names of the persons or organizations who performed the processes specified by subsection (c) of section 601 with respect to that material, and the places where those processes were performed; and]

(9) in the case of a compilation or derivative work, an identification of any preexisting work or works that it is substantially based on or substantially incorporates, and a brief, general statement of the additional material covered by the copyright claim being registered;

(10) at the option of the applicant, names addresses, and telephone numbers of persons or organizations that potential users of the work should contact concerning permissions or licenses to use the work, and any information with respect to the terms of such permissions or licenses; and

* * * * * * *

(b) SHORT-FORM APPLICATION.—

(1) USE OF SHORT-FORM.—The Register of Copyrights shall prescribe a short-form application which may be used whenever—

(A) the work is by a living author;

(B) the claimant is the author;

(C) the work is not anonymous, pseudonymous, or made for hire; and

(D) the work as a whole, or substantial portions of it, have not been previously published or registered.

(2) CONTENTS OF SHORT-FORM.—The short-form application shall include—

(A) the name and address of the author;

(B) the title of the work;

(C) the nationality or domicile of the author;

(D) the year in which creation of the work was completed;

(E) if the work has been published, the date and nation of its first publication;

(F) any other information regarded by the Register of Copyrights as bearing upon the preparation or identification of the work or the existence, ownership, or duration of the copyright; and

(G) at the option of the applicant, names, addresses, and telephone numbers of persons or organizations that potential users of the work should contact concerning permis-

sions or licenses to use the work, and any information with respect to the terms of such permissions or licenses.

§ 410. Registration of claim and issuance of certificate

[(a) When, after examination, the Register of Copyrights determines that, in accordance with the provisions of this title, the material deposited constitutes copyrightable subject matter and that the other legal and formal requirements of this title have been met, the Register shall register the claim and issue to the applicant a certificate of registration under the seal of the Copyright Office. The certificate shall contain the information given in the application, together with the number and effective date of the registration.

[(b) In any case in which the Register of Copyrights determines that, in accordance with the provisions of this title, the material deposited does not constitute copyrightable subject matter or that the claim is invalid for any other reason, the Register shall refuse registration and shall notify the applicant in writing of the reason for such refusal.]

(a) DETERMINATION OF REGISTER.—If, after examination, the Register of Copyrights determines, in accordance with the provisions of this title, that there is no reasonable possibility that a court would hold the work for which a deposit is made pursuant to section 408(c) to be copyrightable subject matter, or the Register determines that the claim is invalid for any other reason, the Register shall refuse registration and notify the applicant in writing of the reasons for such refusal. In all other cases, the Register shall register the claim and issue the applicant a certificate of registration under the seal of the Copyright Office. A certificate of registration issued under this section extends only to those component parts of the work that both are the subject matter of copyright and that the copyright owner has the right to claim. The certificate shall contain the information set forth in the application, together with the number and effective date of the registration.

(b) APPEALS PROCEDURE.—The Register of Copyrights shall establish, and publish in the Federal Register, a formal procedure by which appeals may be taken from refusals under subsection (a) to register claims to copyright. Such procedure shall include a final appeal to the Register.

(c) *EVIDENTIARY WEIGHT OF CERTIFICATE.*—In any judicial proceedings the certificate of a registration made before or within five years after first publication of the work shall constitute prima facie evidence of the validity of the copyright and of the facts stated in the certificate. The evidentiary weight to be accorded the certificate of a registration made thereafter shall be within the discretion of the court. *Any error or omission made in good faith or upon reasonable reliance on counsel shall not affect the validity of the registration. In no case shall an incorrect statement made in an application for copyright registration invalidate the copyright.*

(d) *EFFECTIVE DATE OF REGISTRATION.*—The effective date of a copyright registration is the day on which an application, deposit, and fee, which are later determined by the Register of Copyrights or by a court of competent jurisdiction to be acceptable for registration, have all been received in the Copyright Office.

[§ 411. Registration and infringement actions

[(a) Except for actions for infringement of copyright in Berne Convention works whose country of origin is not the United States and an action brought for a violation of the rights of the author under section 106A(a), and subject to the provisions of subsection (b), no action for infringement of the copyright in any work shall be instituted until registration of the copyright claim has been made in accordance with this title. In any case, however, where the deposit, application, and fee required for registration have been delivered to the Copyright Office in proper form and registration has been refused, the applicant is entitled to institute an action for infringement if notice thereof, with a copy of the complaint, is served on the Register of Copyrights. The Register may, at his or her option, become a party to the action with respect to the issue of registrability of the copyright claim by entering an appearance within sixty days after such service, but the Register's failure to become a party shall not deprive the court of jurisdiction to determine that issue.

[(b)]

§ 411. Registration and infringement actions for certain works

In the case of a work consisting of sounds, images, or both, the first fixation of which is made simultaneously with its transmission, the copyright owner may, either before or after such fixation takes place, institute an action for infringement under section 501, fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if, in accordance with requirements that the Register of Copyrights shall prescribe by regulation, the copyright owner—

[(1) serves notice upon the infringer, not less than ten or more than thirty days before such fixation, identifying the work and the specific time and source of its first transmission, and declaring an intention to secure copyright in the work; and

[(2) makes registration for the work, if required by subsection (a), within three months after its first transmission.]

(1) serves notice upon the infringer, not less than 10 or more than 30 days before such fixation, identifying the work and the specific time and source of its first transmission; and

(2) submits an application for registration of the copyright claim in the work, in accordance with this title, within 3 months after the first transmission of the work.

[§ 412. Registration as prerequisite to certain remedies for infringement

[In any action under this title, other than an action brought for a violation of the rights of the author under section 106A(a) or an action instituted under section 411(b), no award of statutory damages or of attorney's fees, as provided by sections 504 and 505, shall be made for—

[(1) any infringement of copyright in an unpublished work commenced before the effective date of its registration; or

[(2) any infringement of copyright commenced after first publication of the work and before the effective date of its reg-

istration, unless such registration is made within three months after the first publication of the work.]

CHAPTER 5—COPYRIGHT INFRINGEMENT AND REMEDIES

Sec.
501. Infringement of copyright.
502. Remedies for infringement: Injunctions.
503. Remedies for infringement: Impounding and disposition of infringing articles.
504. Remedies for infringement: [Damage] *Damages* and profits.

* * * * * * *

§ 501. Infringement of copyright

(a) Anyone who violates any of the exclusive rights of the copyright owner as provided by [sections 106 though 118] *section 106* or the author as provided in section 106A(a), or who imports copies or phonorecords into the United States in violation of section 602, is an infringer of the copyright or right of the author, as the case may be. For purposes of this chapter (other than section 506), any reference to copyright shall be deemed to include the rights conferred by section 106A(a). As used in this subsection, the term "anyone" includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity.

(b) The legal or beneficial owner of an exclusive right under a copyright is entitled[, subject to the requirements of section 411,] to institute an action for any infringement of that particular right committed while he or she is the owner of it. The court may require such owner to serve written notice of the action with a copy of the complaint upon any person shown, by the records of the Copyright Office or otherwise, to have or claim an interest in the copyright, and shall require that such notice be served upon any person whose interest is likely to be affected by a decision in the case. The court may require the joinder, and shall permit the intervention, of any person having or claiming an interest in the copyright.

* * * * * * *

§ 504. Remedies for infringement: Damages and profits

(a) IN GENERAL.—[Except as otherwise provided by this title, an] *An* infringer of copyright is liable for either—

(1) the copyright owner's actual damages and any additional profits of the infringer, as provided by subsection (b); or

(2) statutory damages, as provided by subsection (s).

* * * * * * *

(c) STATUTORY DAMAGES.—

(1) * * *

(2) In a case where the copyright owner sustains the burden of proving, and the court finds, that infringement was committed willfully, the court in its discretion may increase the award of statutory damages to a sum of not more than $100,000. In

a case where the infringer sustains the burden of proving, and the court finds, that such infringer was not aware and had no reason to believe that his or her acts constituted an infringement of copyright, the court [it] *in* its discretion may reduce *or eliminate* the award of statutory damages [to a sum of not less than $200]. The court shall remit statutory damages in any case where an infringer believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under section 107, if the infringer was: (i) an employee or agent of a nonprofit educational institution, library, or archives acting within the scope of his or her employment who, or such institution, library, or archives itself, which infringed by reproducing the work in copies or phonorecords; or (ii) a public broadcasting entity which or a person who, as a regular part of the nonprofit activities of a public broadcasting entity (as defined in subsection (g) of section 118) infringed by performing a published nondramatic literary work or by reproducing a transmission program embodying a performance of such a work.

* * * * * * *

§ 508. Notification of filing and determination of actions

(a) Within one month after the filing of any action under this title, the clerks of the courts of the United States *and the party filing the action* shall send written notification to the Register of Copyrights setting forth, as far as is shown by the papers filed in the court, the names and addresses of the parties and the title, author, and registration number of each work involved in the action. If any other copyrighted work is later included in the action by amendment, answer, or other pleading, the clerk *and the party filing the action* shall also send a notification concerning it to the Register within one month after the pleading is filed.

(b) Within one month after any final order or judgment is issued in the case, the clerk of the court *and the party filing the action* shall notify the Register of it, sending with the notification a copy of the order or judgment together with the written opinion, if any, of the court.

* * * * * * *

§ 509. Seizure and forfeiture

(a) * * *

(b) The applicable procedures relating to (i) the seizure, summary and judicial forfeiture, and condemnation of vessels, vehicles, merchandise, and baggage for violations of the customs laws contained in title 19, (ii) the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from the sale thereof, (iii) the remission or mitigation of such forfeiture, (iv) the compromise of claims, and (v) the award of compensation to informers in respect of such forfeitures, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions of this section; except that such duties as are imposed upon any officer or employee of the Treasury Department or any other person

with respect to the seizure and forfeiture of vessels, vehicles, merchandise[;], and baggage under the provisions of the customs laws contained in title 19 shall be performed with respect to seizure and forfeiture of all articles described in subsection (a) by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.

* * * * * * *

CHAPTER 6—MANUFACTURING REQUIREMENTS AND IMPORTATION

* * * * * * *

§ 601. Manufacture, importation, and public distribution of certain copies

(a) Prior to July 1, 1986, and except as provided by subsection (b), the importation into or public distribution in the United States of copies of a work consisting preponderantly of [nondramtic] *nondramatic* literary material that is in the English language and is protected under this title is prohibited unless the portions consisting of such material have been manufactured in the United States or Canada.

(b) The provisions of subsection (a) do not apply—

(1) where, on the date when importation is sought or public distribution in the United States is made, the author of any substantial part of such material is neither a national nor a domiciliary of the United States or, if such author is a national of the United States, he or she has been domiciled outside the United States for a continuous period of at least one year immediately preceding that date; in the case of a work made for hire, the exemption provided by this clause does not apply unless a [subsustantial] *substantial* part of the work was prepared for an employer or other person who is not a national or domiciliary of the United States or a domestic corporation or enterprise;

* * * * * * *

§ 801. Copyright Royalty Tribunal: Establishment and purpose

(a) * * *

(b) Subject to the provisions of this chapter, the purposes of the Tribunal shall be—

(1) * * *

* * * * * * *

(4) to distribute royalty payments deposited with the Register of Copyrights under section 1003, to determine the distribution of such payments, and to carry out its other responsibilities under chapter 10.

In determining whether to a return to a copyright owner under section 116 is fair, appropriate weight shall be given to—

(i) * * *

* * * * * * *

CHAPTER 9—PROTECTION OF SEMICONDUCTOR CHIP PRODUCTS

Sec.
901. Definitions.
902. Subject matter of protection.
[903. Ownership and transfer.]
903. Ownership transfer, licensing, and recordation.

* * * * * * *

§ 909. Mask work notice

(a) * * *

(b) The notice referred to in subsection (a) shall consist of—

(1) the words "mask [force] *work*", the [sumbol] *symbol* *M*, or the symbol Ⓜ (the letter M in a circle); and

* * * * * * *

§ 910. Enforcement of exclusive rights

(a) Except as otherwise provided in this chapter, any person who violates any of the exclusive rights of the owner of a mask work under this chapter, by conduct in or affecting commerce, shall be liable as an infringer of such rights. [as] *As* used in this subsection, the term "any person" includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provision of this chapter in the same manner and to the same extent as any nongovernmental entity.

* * * * * * *

CHAPTER 10—DIGITAL AUDIO RECORDING DEVICES AND MEDIA

* * * * * * *

Subchapter C—Royalty Payments

* * * * * * *

§ 1006. Entitlement to royalty payments

(a) * * *

(b) ALLOCATION OF ROYALTY PAYMENTS TO GROUPS.—The royalty payments shall be divided into 2 funds as follows:

(1) THE SOUND RECORDINGS FUND.—66⅔ percent of the royalty payments shall be allocated to the Sound Recordings Fund. 2⅝ percent of the royalty payments allocated to the Sound Recordings Fund shall be placed in an escrow account managed by an independent administrator jointly appointed by the interested copyright parties described in section 1001(7)(A) and the American Federation of Musicians (or any successor entity) to be distributed to nonfeatured Musicians (whether or not members of the American Federation of musicians or any successor entity) who have performed on sound recordings distributed in the United States. 1⅜ percent of the royalty payments allocated to the Sound Recordings Fund shall be placed

in an escrow account managed by an independent administrator jointly appointed by the interested copyright parties described in section 1001(7)(A) and the American Federation of Television and Radio Artists (or any successor entity) to be distributed to nonfeatured vocalists (whether or not members of the American Federation *of*d Television and Radio Artists or any successor entity) who have performed on sound recordings distributed in the United States. 40 percent of the remaining royalty payments in the Sound Recordings Fund shall be distributed to the interested copyright parties described in section 1001(7)(C), and 60 percent of such remaining royalty payments shall be distributed to the interested copyright parties described in section 1001(7)(A).

* * * * * * *

§ 1007. Procedures for distributing royalty payments

(a) FILING OF CLAIMS AND NEGOTIATIONS.—

(1) FILING OF CLAIMS.—During the first 2 months of each calendar year after **[**the calendar year in which this chapter takes effect**]** *calendar year 1992*, every interested copyright party seeking to receive royalty payments to which such party is entitled under section 1006 shall file with the Copyright Royalty Tribunal a claim for payments collected during the preceding year in such form and manner as the Tribunal shall prescribe by regulation.

* * * * * * *

(b) DISTRIBUTION OF PAYMENTS IN THE ABSENCE OF A DISPUTE.—Within 30 days after the period established for the filing of claims under subsection (a), in each year after **[**the year in which this section takes effect**]** *1992*, the Copyright Royalty Tribunal shall determine whether there exists a controversy concerning the distribution of royalty payments under section 1006(c). If the Tribunal determines that no such controversy exists, the Tribunal shall, within 30 days after such determination, authorize the distribution of the royalty payments as set forth in the agreements regarding the distribution of royalty payments entered into pursuant to subsection (a), after deducting its reasonable administrative costs under this section.

* * * * * * *

SECTION 2319 OF TITLE 18, UNITED STATES CODE

§ 2319. Criminal infringement of a copyright

(a) * * *

(b) Any person who commits an offense under subsection (a) of this section—

(1) shall be imprisoned not more than 5 years, or fined in the amount set forth in this title, or both, if the offense consists of the reproduction or distribution, during any 180-day period,

of at [last] *least* 10 copies or phonorecords, of 1 or more copyrighted works, with a retail value of more than $2,500;

* * * * * * *

ACT OF NOVEMBER 9, 1987

AN ACT To amend chapter 9 of title 17, United States Code, regarding protection extended to semiconductor chip products of foreign entities

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled,

SECTION 1. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) section 914 of title 17, United States Code, which authorizes the Secretary of Commerce to issue orders extending interim protection under chapter 9 of title 17, United States Code, to mask works fixed in semiconductor chip products and [orginating] *originating* in foreign countries that are making good faith efforts and reasonable progress toward providing protection, by treaty or legislation, to mask works of United States nationals, has resulted in substantial and positive legislative developments in foreign countries regarding protection of mask works;

* * * * * * *

SECTION 3 OF THE AUDIO HOME RECORDING ACT OF 1992

SEC. 3. TECHNICAL AMENDMENTS.

(a) FUNCTIONS OF REGISTER.—Chapter 8 of title 17, United States Code is amended—

(1) in section 801(b)—

(A) * * *

* * * * * * *

(C) by [adding the following new paragraph at the end] *inserting after paragraph (3) the following new paragraph:*

"(4) to distribute royalty payments deposited with the Register of Copyrights under section 1003, to determine the distribution of such payments, and to carry out its other responsibilities under chapter 10"; and

* * * * * * *

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Union Calendar No. 214

103D CONGRESS
1ST SESSION

H. R. 897

[Report No. 103–388]

To amend title 17, United States Code, to modify certain recordation and registration requirements, to establish copyright arbitration royalty panels to replace the Copyright Royalty Tribunal, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 16, 1993

Mr. HUGHES (for himself and Mr. FRANK of Massachusetts) introduced the following bill; which was referred to the Committee on the Judiciary

NOVEMBER 20, 1993

Additional sponsors: Mr. CHAPMAN, Mr. MACHTLEY, Mr. OBERSTAR, and Ms. PELOSI

NOVEMBER 20, 1993

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on February 16, 1993]

A BILL

To amend title 17, United States Code, to modify certain recordation and registration requirements, to establish copyright arbitration royalty panels to replace the Copyright Royalty Tribunal, and for other purposes.

1205/1831

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Copyright Reform Act of 1993".

SEC. 2. DEPOSIT OF COPIES OR PHONORECORDS FOR LIBRARY OF CONGRESS.

Section 407 of title 17, United States Code, is amended as follows:

(1) Subsection (a) is amended by striking "(a)" and all that follows through "publication—" and inserting the following:

"(a) REQUIRED DEPOSITS.—Except as provided in subsection (c), the owner of copyright in a work or of the exclusive right of publication of a work in the United States shall deposit, after the earliest date of such publication—".

(2) Subsection (b) is amended—

(A) by inserting "DEPOSIT IN COPYRIGHT OFFICE.—" after "(b)"; and

(B) by adding at the end the following: "A deposit made under this section may be used to satisfy the deposit requirements of section 408.".

(3) Subsection (c) is amended—

(A) by inserting "REGULATIONS.—" after "(c)"; and

(B) by striking "Register of Copyrights" and inserting "Librarian of Congress".

(4) Subsection (d) is amended—

(A) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(B) by striking "(d) At any time after publication of a work as provided by subsection (a)" and inserting the following:

"(d) PROCEDURES.—(1) During November of each year, the Librarian of Congress shall publish in the Federal Register a statement of the categories of works of which the Library of Congress wishes to acquire copies or phonorecords under this section during the next calendar year. The Librarian shall review such statement annually in light of the changes in the Library's policies and procedures, changes in technology, and changes in patterns of publication. The statement shall also describe—

"(A) the types of works of which only one copy or phonorecord need be deposited;

"(B) the types of works for which the deposit requirements may be fulfilled by placing the Library of Congress on a subscription list; and

"(C) the categories of works which are exempt under subsection (c) from the deposit requirements.

"(2) At any time after publication in the United States of a work or body of works";

(C) by striking "Register of Copyrights" and inserting "Librarian of Congress";

(D) by inserting after the first sentence the following: "Such demand shall specify a date for compliance with the demand.";

(E) by inserting "in a civil action" after "are liable";

(F) in subparagraph (B) (as redesignated by subparagraph (A) of this paragraph) by striking "cost of" and inserting "cost to";

(G) in subparagraph (C) (as redesignated by subparagraph (A) of this paragraph) by striking "clauses (1) and (2)" and inserting "subparagraphs (A) and (B)"; and

(H) by adding after subparagraph (C) (as so redesignated) the following:

"In addition to the penalties set forth in subparagraphs (A), (B), and (C), the person against whom an action is brought under this paragraph shall be liable in such action for all costs of the United States in pursuing the demand,

including an amount equivalent to a reasonable attorney's fee.".

(5) Subsection (e) is amended—

(A) by inserting "TRANSMISSION PROGRAMS.—" after "(e)";

(B) by striking "Register of Copyrights shall, after consulting with the Librarian of Congress and other interested organizations and officials," and inserting "Librarian of Congress shall, after consulting with interested organizations and officials,"; and

(C) in paragraph (2) by striking "Register of Copyrights" and inserting "Librarian of Congress".

(6) Section 407 of title 17, United States Code, is further amended by adding at the end the following:

"(f) OBLIGATION TO MAKE DEPOSITS.—Immediately upon the publication in the United States of any work in which copyright subsists under this title, it shall be the obligation of the persons identified in subsection (a) with respect to that work, subject to the requirements and exceptions specified in this section, to deposit, for the use or disposition of the Library of Congress, the copies or phonorecords specified in such subsection. The obligation to

make such deposit arises without any prior notification or demand for compliance with subsection (a).

"(g) RECORDS OF DEPOSITS.—The Librarian of Congress shall establish and maintain public records of the receipt of copies and phonorecords deposited under this section.

"(h) DATABASE OF DEPOSIT RECORDS.—The Librarian of Congress shall establish and maintain an electronic database containing its records of all deposits made under this section on and after October 1, 1995, and shall make such database available to the public through one or more international information networks.

"(i) DELEGATION AUTHORITY.—The Librarian of Congress may delegate to the Register of Copyrights or other officer or employee of the Library of Congress any of the Librarian's responsibilities under this section.".

SEC. 3. COPYRIGHT REGISTRATION IN GENERAL.

Section 408 of title 17, United States Code, is amended—

(1) in subsection (c)—

(A) in paragraph (1) by adding at the end the following: "The Register is also authorized to specify by regulation classes of material in which registration may be made without deposit of any copy or phonorecord, in cases in which the Reg-

ister determines that the purposes of examination, registration, and deposit can be adequately served by deposit of descriptive material only, or by a written obligation to deposit copies or phonorecords at a later date."; and

(B) in paragraph (2) by striking "periodicals, including newspapers" and all that follows through the end of subparagraph (B) and inserting "collective works, including periodicals, published within a 5-year period, on the basis of a single deposit and application and upon payment of any special registration fee imposed under section 708(a)(10), if the application identifies each work separately, including the collective work containing it and its date of first publication."; and

(2) by adding at the end the following:

"(f) COPYRIGHT OFFICE HEARINGS.—Not later than 1 year after the effective date of this subsection, and at 1-year intervals thereafter, the Register of Copyrights shall hold public hearings to consider proposals to amend the regulations and practices of the Copyright Office with respect to deposit of works in order to eliminate deposits that are unnecessary for copyright examination or the collections of

the Library of Congress, and in order to simplify the registration procedures.".

SEC. 4. APPLICATION FOR COPYRIGHT REGISTRATION.

(a) APPLICATIONS.—Section 409 of title 17, United States Code, is amended—

(1) by striking "The application" and inserting "(a) CONTENTS OF APPLICATION.—The application";

(2) in paragraph (5) by inserting before the semicolon the following: ", and if the document by which ownership was obtained has been recorded in the Copyright Office, the volume and page number of such recordation";

(3) by striking paragraphs (9) and (10) and inserting the following:

"(9) in the case of a compilation or derivative work, an identification of any preexisting work or works that it is substantially based on or substantially incorporates, and a brief, general statement of the additional material covered by the copyright claim being registered;

"(10) at the option of the applicant, names, addresses, and telephone numbers of persons or organizations that potential users of the work should contact concerning permissions or licenses to use the work,

and any information with respect to the terms of such permissions or licenses; and"; and

(4) by adding at the end the following:

"(b) SHORT-FORM APPLICATION.—

"(1) USE OF SHORT-FORM.—The Register of Copyrights shall prescribe a short-form application which may be used whenever—

"(A) the work is by a living author;

"(B) the claimant is the author;

"(C) the work is not anonymous, pseudonymous, or made for hire; and

"(D) the work as a whole, or substantial portions of it, have not been previously published or registered.

"(2) CONTENTS OF SHORT-FORM.—The short-form application shall include—

"(A) the name and address of the author;

"(B) the title of the work;

"(C) the nationality or domicile of the author;

"(D) the year in which creation of the work was completed;

"(E) if the work has been published, the date and nation of its first publication;

"(F) any other information regarded by the Register of Copyrights as bearing upon the preparation or identification of the work or the existence, ownership, or duration of the copyright; and

"(G) at the option of the applicant, names, addresses, and telephone numbers of persons or organizations that potential users of the work should contact concerning permissions or licenses to use the work, and any information with respect to the terms of such permissions or licenses.".

(b) EFFECTIVE DATE.—The amendments made by this section take effect 6 months after the date of the enactment of this Act.

SEC. 5. REGISTRATION OF CLAIM AND ISSUANCE OF CERTIFICATE.

(a) DETERMINATION OF REGISTRATION.—Section 410 of title 17, United States Code, is amended by striking subsections (a) and (b) and inserting the following:

"(a) DETERMINATION OF REGISTER.—If, after examination, the Register of Copyrights determines, in accordance with the provisions of this title, that there is no reasonable possibility that a court would hold the work for which a deposit is made pursuant to section 408(c) to be copy-

rightable subject matter, or the Register determines that the claim is invalid for any other reason, the Register shall refuse registration and notify the applicant in writing of the reasons for such refusal. In all other cases, the Register shall register the claim and issue to the applicant a certificate of registration under the seal of the Copyright Office. A certificate of registration issued under this section extends only to those component parts of the work that both are the subject matter of copyright and the copyright owner has the right to claim. The certificate shall contain the information set forth in the application, together with the number and effective date of the registration.

"(b) APPEALS PROCEDURE.—The Register of Copyrights shall establish, and publish in the Federal Register, a formal procedure by which appeals may be taken from refusals under subsection (a) to register claims to copyright. Such procedure shall include a final appeal to the Register.".

(b) JUDICIAL PROCEEDINGS.—Subsection (c) of section 410 of title 17, United States Code, is amended—

(1) by inserting "EVIDENTIARY WEIGHT OF CERTIFICATE.—" after "(c)"; and

(2) by adding at the end the following: "Any error or omission made in good faith or upon reasonable reliance on counsel shall not affect the validity

of the registration. In no case shall an incorrect statement made in an application for copyright registration invalidate the copyright.".

(c) TECHNICAL AMENDMENT.—Subsection (d) of section 410 of title 17, United States Code, is amended by inserting "EFFECTIVE DATE OF REGISTRATION.—" after "(d)".

SEC. 6. COPYRIGHT REGISTRATION PROVISIONS.

(a) REGISTRATION AND INFRINGEMENT ACTIONS.—(1) Section 411 of title 17, United States Code, is amended—

(A) by amending the section caption to read as follows:

"§411. Registration and infringement actions for certain works";

(B) by striking subsection (a); and

(C) in subsection (b)—

(i) by striking "(b)"; and

(ii) by striking paragraphs (1) and (2) and inserting the following:

"(1) serves notice upon the infringer, not less than 10 or more than 30 days before such fixation, identifying the work and the specific time and source of its first transmission; and

"(2) submits an application for registration of the copyright claim in the work, in accordance with

this title, within 3 months after the first transmission of the work.".

(2) The item relating to section 411 in the table of sections at the beginning of chapter 4 of title 17, United States Code, is amended to read as follows:

"411. Registration and infringement actions for certain works.".

(b) REGISTRATION AS PREREQUISITE TO CERTAIN REMEDIES FOR INFRINGEMENT.—Section 412 of title 17, United States Code, and the item relating to section 412 in the table of sections at the beginning of chapter 4 of title 17, United States Code, are repealed.

SEC. 7. REMEDIES FOR INFRINGEMENT.

Section 504(c)(2) of title 17, United States Code, is amended in the second sentence—

(1) by striking "court it" and inserting "court in";

(2) by inserting "or eliminate" after "reduce"; and

(3) by striking "to a sum of not less than $200".

SEC. 8. NOTIFICATION OF FILING AND DETERMINATION OF ACTIONS.

Section 508 of title 17, United States Code, is amended—

(1) in subsection (a)—

(A) in the first sentence by inserting "and the party filing the action" after "United States"; and

(B) in the second sentence by inserting "and the party filing the action" after "clerk"; and

(2) in subsection (b) by inserting "and the party filing the action" after "clerk of the court".

SEC. 9. STUDY ON MANDATORY DEPOSIT.

(a) SUBJECT MATTER OF STUDY.—Upon the enactment of this Act, the Librarian of Congress shall conduct a study of the mandatory deposit provisions of section 407 of title 17, United States Code. Such study shall place particular emphasis on the implementation of section 407(e) of such title with respect to the deposit of transmission programs, as well as possible alternative methods of obtaining deposits if the mandatory deposit requirements of such section 407 are expanded to authorize the collection, archival preservation, and use by the Library of Congress of other publicly transmitted works, including unpublished works such as computer programs and online databases.

(b) CONDUCT OF STUDY.—The study under subsection (a) shall be conducted by the Register of Copyright, in consultation with any affected interests, and may include the

voluntary establishment, in collaboration with representatives of such interests, of practical tests and pilot projects.

(c) REPORT TO CONGRESS.—Not later than 18 months after the date of the enactment of this Act, the Librarian shall submit to the Congress a report on the results of the study conducted under this section, together with recommendations the Librarian has on—

(1) safeguarding the interests of copyright owners whose works are subject to the mandatory deposit provisions referred to in subsection (a);

(2) fulfilling the present and future needs of the Library of Congress with respect to archival and other collections development; and

(3) any legislation that may be necessary.

SEC. 10. STUDIES OF EFFECTS OF REGISTRATION AND DEPOSIT PROVISIONS.

Upon the enactment of this Act, the Librarian of Congress, after consultation with the Register of Copyrights and any affected interests, shall commence a study of the extent to which changes in the registration and deposit provisions of title 17, United States Code, that are made by this Act have affected the acquisitions of the Library of Congress and the operations of the copyright registration system, and any recommendations the Librarian may have with respect to such effects. Not later than 3 years after the date of the en-

actment of this Act, the Librarian shall submit to the Congress a report on such study. The Librarian may conduct further studies described in the first sentence, and report to the Congress on such studies.

SEC. 11. CONFORMING AMENDMENTS.

(a) DEFINITIONS.—Section 101 of title 17, United States Code, is amended by striking the definition of the "country of origin" of a Berne Convention work.

(b) INFRINGEMENT OF COPYRIGHT.—Section 501(b) of title 17, United States Code, is amended in the first sentence by striking ", subject to the requirements of section 411,".

(c) REMEDIES FOR INFRINGEMENT.—Section 504(a) of title 17, United States Code, is amended by striking "Except as otherwise provided by this title, an" and inserting "An".

SEC. 12. ADDITIONAL TECHNICAL AMENDMENTS.

(a) AMENDMENTS TO TITLE 17, UNITED STATES CODE.—Title 17, United States Code, is amended as follows:

(1) The definition of "publicly" contained in section 101 is amended—

(A) by striking "clause" and inserting "paragraph"; and

(B) by striking "processs" and inserting "process".

(2) The definition of "registration" contained in section 101 is amended by striking "412,".

(3) Section 108(e) is amended in the matter preceding paragraph (1) by striking "pair" and inserting "fair".

(4) Section 109(b)(2)(B) is amended by striking "Copyright" and inserting "Copyrights".

(5) Section 304(c) is amended in the matter preceding paragraph (1) by striking "the subsection (a)(1)(C) and inserting "subsection (a)(1)(C)".

(6) Section 405(b) is amended by striking "condition or" and inserting "condition for".

(7) The item relating to section 504 in the table of sections at the beginning of chapter 5 is amended by striking "Damage" and inserting "Damages".

(8) Section 501(a) is amended by striking "sections 106 through 118" and inserting "section 106".

(9) Section 509(b) is amended by striking "merchandise; and baggage" and inserting "merchandise, and baggage".

(10) Section 601 of title 17, United States Code, is amended—

(A) in subsection (a) by striking "nondramtic" and inserting "nondramatic"; and

(B) in subsection (b)(1) by striking "subsustantial" and inserting "substantial".

(11) Section 801(b)(4) of title 17, United States Code, is amended by adding a period after "chapter 10".

(12) The item relating to section 903 in the table of sections at the beginning of chapter 9 is amended to read as follows:

"903. Ownership, transfer, licensing, and recordation.".

(13) Section 909(b)(1) is amended—

(A) by striking "force" and inserting "work"; and

(B) by striking "sumbol" and inserting "symbol".

(14) Section 910(a) is amended in the second sentence by striking "as used" and inserting "As used".

(15) Section 1006(b)(1) is amended by striking "Federation Television" and inserting "Federation of Television".

(16) Section 1007 is amended—

(A) in subsection (a)(1) by striking "the calendar year in which this chapter takes effect" and inserting "calendar year 1992"; and

(B) in subsection (b) by striking "the year in which this section takes effect" and inserting "1992".

(17) The table of chapters at the beginning of title 17, United States Code, is amended—

(A) by amending the item relating to chapter 6 to read as follows:

"6. Manufacturing Requirements and Importation ..... 601";

(B) by amending the item relating to chapter 9 to read as follows:

"9. Protection of Semiconductor Chip Products ..... 901";

and

(C) by adding at the end the following:

"10. Digital Audio Recording Devices and Media ..... 1001".

(b) OTHER PROVISIONS OF LAW.—(1) Section 2319(b)(1) of title 18, United States Code, is amended by striking "at last" and inserting "at least".

(2) Section 1(a)(1) of the Act entitled "An Act to amend chapter 9 of title 17, United States Code, regarding protection extended to semiconductor chip products of foreign entities", approved November 9, 1987 (17 U.S.C. 914 note), is amended by striking "orginating" and inserting "originating".

(3) Section 3(a)(1)(C) of the Audio Home Recording Act of 1992 is amended by striking "adding the following

new paragraph at the end" and inserting "inserting after paragraph (3) the following new paragraph".

SEC. 13. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in section 4(b), and subject to subsection (b) of this section, this Act and the amendments made by this Act take effect on the date of the enactment of this Act.

(b) PENDING ACTIONS.—The amendments and repeals made by section 6 shall not affect any action brought under title 17, United States Code, before the date of the enactment of this Act.

Amend the title so as to read: "A bill to amend title 17, United States Code, to modify certain registration requirements, and for other purposes.".

Union Calendar No. 214

103D CONGRESS
1ST SESSION

H. R. 897

[Report No. 103–388]

A BILL

To amend title 17, United States Code, to modify certain recordation and registration requirements, to establish copyright arbitration royalty panels to replace the Copyright Royalty Tribunal, and for other purposes.

NOVEMBER 20, 1993

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed